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W99i
1910

IRRIGATION LAWS OF WYOMING

IRRIGATION LAWS

OF THE

STATE OF WYOMING

CODIFIED FROM THE COMPILED LAWS OF WYOMING

1910

PREPARED FOR PUBLICATION IN THE OFFICE OF THE STATE ENGINEER, CHEYENNE, WYOMING, AND PUBLISHED FOR THE CONVENIENCE OF IRRIGATORS, ENGINEERS AND ATTORNEYS

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Irrigation Laws of Wyoming.

CONSTITUTIONAL PROVISIONS.

ARTICLE I.

Sec. 31. Water—Control of. Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the state, which, in providing for its use, shall equally guard all the various interests involved.

Farm Investment Co. v. Carpenter, 9 Wyo. 127, 61 Pac. 258.

ARTICLE VIII.

IRRIGATION AND WATER RIGHTS.

Section 1. Water is state property. The water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the state, are hereby declared to be the property of the state.

Farm Investment Co. v. Carpenter, 9 Wyo. 127, 61 Pac. 258; Willey v. Decker, 11 Wyo. 533, 73 Pac. 210.

Sec. 2. Board of control. There shall be constituted a board of control, to be composed of the state engineer and superintendents of the water divisions; which shall, under such regulations as may be prescribed by law, have the supervision of the waters of the state and of their appropriation, distribution and diversion, and of the various officers connected therewith. Its decisions to be subject to review by the courts of the state.

Farm Investment Co. v. Carpenter, 9 Wyo. 127, 61 Pac. 258; Willey v. Decker, 11 Wyo. 533, 73 Pac. 210.

Sec. 3. Priority of appropriation. Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

Farm Investment Co. v. Carpenter, 9 Wyo. 127, 61 Pac. 258; Willey v. Decker, 11 Wyo. 533, 73 Pac. 210.

Sec. 4. Water divisions. The legislature shall by law divide the state into four (4) water divisions, and provide for the appointment of superintendents thereof.

Farm Investment Co. v. Carpenter, 9 Wyo. 127, 61 Pac. 258.

Sec. 5. State engineer. There shall be a state engineer who shall be appointed by the governor of the state and confirmed by the senate; he shall hold his office for the term of six (6) years, or until his successor shall have been appointed and shall have qualified. He shall be president of the board of control, and shall have general supervision of the waters of the state and of the officers connected with its distribution. No person shall be appointed to this position who has not such theo-

retical knowledge and such practical experience and skill as shall fit him for the position.

Farm Investment Co. v. Carpenter, 9 Wyo. 127, 61 Pac. 258.

ARTICLE XIII.

Sec. 5. Water—Right to Acquire. Municipal corporations shall have the same right as individuals to acquire rights by prior appropriation and otherwise to the use of water for domestic and municipal purposes, and the legislature shall provide by law for the exercise upon the part of incorporated cities, towns and villages of the right of eminent domain for the purpose of acquiring from prior appropriators upon the payment of just compensation, such water as may be necessary for the well being thereof and for domestic uses.

Johnston v. Irrigation Co., 13 Wyo. 235, 79 Pac. 22.

COMPILED STATUTES OF 1910.

CHAPTER 19.

STATE ENGINEER.

§ 149. Oath and bond—Qualification. Before entering upon the duties of his office, the state engineer shall take the oath prescribed by the constitution. He shall enter into a bond to the state of Wyoming, in the penal sum of five thousand dollars, with no less than two sureties, and conditioned for the faithful discharge of the duties of his office, and for delivery to his successor, or other officer appointed by the governor to receive the same, all moneys, books and other property belonging to the state, then in his hands or under his control, or with which he may be legally chargeable, as such officer. No person shall be appointed as such state engineer who is not known to have such theoretical knowledge and practical skill and experience as shall fit him for the position. [L. 1890-91, ch. 8, § 8; R. S. 1899, § 101.]

§ 150. Salary. The state engineer shall receive a salary of three thousand five hundred dollars per annum. [L. 1890-91, ch. 8, § 6; R. S. 1899, § 102; Am. L. 1909, ch. 71.]

§ 151. Office at state capitol. The state engineer shall keep his office at the state capital in the capitol building. [L. 1890-91, ch. 8, § 7; R. S. 1899, § 103.]

§ 152. Duties. The state engineer shall make, or cause to be made, measurements and calculations of the discharge of streams, from which water shall be taken for beneficial purposes, commencing such work upon those streams as are most used for irrigation, or other beneficial purposes. He shall collect facts, and make surveys to determine the most suitable location for constructing works for utilizing the water of the state, and to ascertain the location of the lands best suited for irrigation. He shall examine reservoir sites and shall, in his reports, embody all the facts ascertained by such surveys and examinations, including, wherever practicable, estimates of the cost of proposed ir-

rigation works, and of the improvement of reservoir sites. He shall become conversant with the water ways of the state, and the needs of the state as to irrigation matters, and in his reports to the governor he shall make such suggestions as to the amendment of existing laws, or the enactment of new laws, as his information and experience shall suggest, and he shall keep in his office full and proper records of his work, observations and calculations, all of which shall be the property of the state. [L. 1890-91, ch. 8, § 9; R. S. 1899, § 104.]

(Note:—See also state constitution, art. VIII.)

§ 153. Assistant engineer—Deputy engineer. The state engineer shall have the power to employ an assistant engineer, at an expense not to exceed fifteen hundred dollars per annum, and to employ other assistants at a total additional expense not to exceed one thousand dollars per year. In addition he is hereby authorized, in connection with his duties pertaining to irrigation projects under the provisions of chapter 55, to employ a deputy engineer, at an expense not to exceed one thousand eight hundred dollars per annum, whose duty it shall be to act under instructions of the state engineer to assist in all such irrigation development and to report, after inspection of irrigation works, to the state engineer. Such deputy engineer may be detailed to perform such other work for the benefit of the state as the state engineer may direct. [L. 1890-91, ch. 8, § 10; R. S. 1899, § 105; L. 1907, ch. 86, § 1.]

§ 154. Traveling expenses. When the state engineer or his assistant engineers are called away from the office, they shall be entitled to their actual traveling expenses, which shall be paid out of any money appropriated for that purpose, on the certificate of said state engineer. Such certificate shall be presented to the state auditor, who shall thereupon draw upon the state treasurer for the amount thereof. [L. 1890-91, ch. 8, § 11; R. S. 1899, § 106; L. 1907, ch. 86, § 2.]

§ 155. Reports. The state engineer shall prepare and render to the governor, biennially, and oftener if required, full and true reports of his work, touching all the matters and duties devolving upon him by virtue of his office, which report shall be delivered to the governor on or before the thirtieth day of November, of the year preceding the regular session of the legislature. [L. 1890-91, ch. 8, § 12; R. S. 1899, § 107.]

§ 156. Fees. The state engineer shall receive the following fees, which shall be collected in advance and be paid by him into the general fund of the state treasury as by law provided:

For filing and examining applications for permits to appropriate water, and maps of same, two dollars.

For recording any water right instrument not specified above, one dollar for the first one hundred words and for each additional folio, fifteen cents.

For issuing certificate of appropriation of water, one dollar, Provided, That said fee of one dollar shall be by each appropriator or claimant paid to the water division superintendent at the time of the submission of testimony and proof of appropriation of water by such appropriator, or claimant, before the said division superintendent, as by law provided, which said fee shall be, by said superintendent, immediately turned over to the said state engineer and his receipt taken therefor and filed in the records of the board of control.

For making certified copies of any document recorded or filed in the state engineer's office, one dollar for the first folio and fifteen cents

for each subsequent folio, and for each certificate attached thereto, one dollar.

[L. 1899, ch. 79, § 1; R. S. 1899, § 108; L. 1905, ch. 82.]

§ 157. Fees paid to general fund. All moneys received by the state engineer in accordance with the provisions of section 156, shall be paid by him into the state treasury on the first Monday of January, April, July and October, respectively. The state treasurer shall credit the same to the general fund. [L. 1899, ch. 38; R. S. 1899, § 109.]

(Note:—Above section affected by § 1, ch. 30, L. 1907; see § 2486 hereof.—Compiler.)

§ 230. Arid land funds. As provided in the said acts of congress, all moneys collected by the commissioner of public lands from the sale of lands selected under the provisions of such acts of congress shall be deposited by said commissioner with the state treasurer, and shall constitute a trust fund in the hands of said treasurer to be used only for the reclamation of other arid lands when appropriated by the legislature for that purpose in the manner that other appropriations are made. [L. 1905, ch. 36, § 7.]

ACT OF CONGRESS REGARDING "CAREY ARID LAND ACT."

This act (28 Stat., 372-422) was a rider on an act of Congress entitled "An act making appropriation for sundry civil expenses of the government for the fiscal year ending June 30th, 1895, and for other purposes," approved August 18th, 1894, and is as follows:

"Sec. 4. That to aid the public land states in the reclamation of the desert lands therein, and the settlement, cultivation and sale thereof in small tracts to actual settlers, the Secretary of the Interior, with the approval of the President, be, and hereby is, authorized and empowered, upon proper application of the State, to contract and agree, from time to time, with each of the States in which there may be situated desert lands as defined by the act entitled 'An act to provide for the sale of desert lands in certain States and Territories,' approved March 3d, 1877, and the act amendatory thereof, approved March 3d, 1891, binding the United States to donate, grant and patent to the State free of cost for survey or price such desert lands, not exceeding one million acres in each State as the State may cause to be irrigated, reclaimed and occupied, and not less than twenty acres of each one hundred and sixty acre tract cultivated by actual settlers, within ten years next after the passage of this act, as thoroughly as is required of citizens who may enter under the said desert land law.

"Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the said land proposed to be irrigated, which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the State to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved. That any State contracting under this section is hereby

authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the State shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation and settlement.

"As fast as any State may furnish satisfactory proof according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled; Provided, That said States shall not sell or dispose of more than one hundred and sixty acres of said land to any one person, and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. That to enable the Secretary of the Interior to examine any of the lands that may be selected under the provisions of this section, there is hereby appropriated out of any moneys in the treasury, not otherwise appropriated, one thousand dollars."

The above act was, by 29 Statutes, 413-434, approved June 11th, 1896, amended as follows:

"That under any law heretofore or hereafter enacted by any State, providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section four of an act entitled 'An act making appropriations for the sundry civil expenses of the government for the fiscal year ending June 30th, 1895,' approved August 18th, 1894, a lien or liens is hereby authorized to be created by the State to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such State without regard to settlement or cultivation; Provided, That in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirecely liable for any amount of any such lien or liability, in whole or in part."

The above act was further amended by 31 Statutes, 1138-1188, approved March 3d, 1901, as follows:

"The ten years' period within which any State shall cause the lands applied for under said act to be irrigated and reclaimed, as provided for in said act as amended by the act of June 11th, 1896, shall be begun to run from the date of approval by the Secretary of the Interior of the State's application for the segregation of such lands; and if the State fails within said ten years to cause the whole or any part of the lands so segregated to be irrigated and reclaimed, the Secretary of the Interior may, in his discretion, continue said segregation for a period of not exceeding five years, or may, in his discretion, restore such lands to the public domain."

CHAPTER 55.

CAREY ACT LANDS.

§ 661. Acceptance of grant. The state of Wyoming hereby accepts the conditions of § 4 of an act of congress entitled An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1895, and for other purposes; approved August 18th, A. D. 1894, together with all the grants of land to the state under the provisions of the aforesaid act, and the conditions of § 1 of an act of congress entitled, An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1897, and for other purposes; approved June 11th, 1896, and the conditions of an act of congress entitled, An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1909, and for other purposes; approved May 27th, 1908, providing for the granting of an additional million acres of land to the state of Wyoming to be reclaimed as provided in the acts above mentioned, and all acts of congress and parts of acts of congress now or hereafter enacted by congress for the reclamation of desert lands within the state of Wyoming, together with all the grants of land to the state of Wyoming, and any and all interests therein, with all rights and privileges thereunder, under the provisions of the aforesaid acts or parts of acts. [L. 1895, ch. 38, § 1; R. S. 1899, § 934; L. 1909, ch. 160, § 1.]

§ 662. Management. The selection, management and disposal of said land shall be vested in the state board of land commissioners, as constituted by section 3 of article XVIII of the constitution of the state of Wyoming. Said board of land commissioners shall be hereinafter designated as "The Board." [L. 1895, ch. 38, § 2; R. S. 1899, § 935.]

§ 663. Meetings and officers. The board shall meet at least once in each month on the first Tuesday thereof, for the transaction of business. The governor shall be the president of the board, and it shall be his duty to sign all contracts, papers or documents that shall be approved, made or directed by the board. Any two of the board shall constitute a quorum for the transaction of any and all business; and in the absence of the governor, one of the other members may act as president pro tempore, and may preside at such meeting. [L. 1895, ch. 38, § 3; R. S. 1899, § 936.]

§ 664. Special meetings. The president shall have the power to call together a special meeting, if in his judgment, public good requires the same to be done for any purpose contemplated in this chapter, or any other chapter prescribing the duty of said board; and such call may be either a personal or written notice. The object of such meeting shall be made a matter of record by the secretary of the board. The board shall elect one of its members secretary, whose duty it shall be to keep a careful record of the transactions of the board in a substantially bound book to be kept for that purpose, and which shall be known as the record and proceedings of the state board of land commissioners. He shall countersign all papers, instruments or documents approved, made or directed by the board, and bearing the signature of the president. [L. 1895, ch. 38, § 4; R. S. 1899, § 937.]

§ 665. Office of board. The board shall have an office in the capitol building in a room set apart by the capitol commission. Said office shall be in charge of the commissioner of public lands. He shall have

the custody of the records of the board; shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this chapter; prepare and keep for public inspection maps or plats, on a scale of two inches to the mile, of all lands selected; receive entries of settlers on these lands, and hear or receive the final proof of their reclamation, and do any and all work required by the board in carrying out the provisions of this chapter. He shall have authority to administer oaths whenever necessary in the performance of his duties. [L. 1895, ch. 38, § 6; R. S. 1899, § 939.]

§ 666. **Requests and proposals.** Any person, company of persons, association or incorporated company constructing, having constructed or desiring to construct ditches, canals or other irrigation works to reclaim land under the provisions of this chapter shall file with the board a request for the selection on behalf of the state by the board, of the land to be reclaimed, designating said land by legal subdivisions. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the land asked to be selected. The proposal shall be prepared in accordance with the rules of the board and with the regulations of the department of the interior. It shall state the source of water supply, the location and dimensions of the proposed works, the estimated cost thereof, the price and terms per acre at which perpetual water rights will be sold to settlers on the land to be reclaimed, said perpetual rights to embrace a proportionate interest in the canal or other irrigation works, together with all rights and franchises attached thereto. In the case of incorporated companies, it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its directors and officers, the amount of its authorized and its paid up capital. If the applicant is not an incorporated company, the proposal shall set forth the name or names of the party or parties, and such other facts as will enable the board to determine his or their financial ability to carry out the proposed undertaking. [L. 1895, ch. 38, § 7; R. S. 1899, § 940.]

§ 667. **Deposit.** The board shall have authority to prescribe that each request and proposal shall be accompanied by a certified check in an amount to be designated by the board, the same to be held as a guarantee of the execution of the contract with the state in accordance with its terms by the parties submitting such proposals, in case of the approval of the same and selection of the land by the board and to be forfeited to the state in case of failure of said parties to enter into a contract with the state in accordance with the provisions of this chapter. [L. 1899, ch. 6, § 1; R. S. 1899, § 941.]

§ 668. **Application for permit.** The person, company of persons, association or incorporated company, making application to the board for the selection of lands by the state, shall have filed with the state engineer an application for a permit to appropriate water for the reclamation of the lands described in the request to the board. This application shall be prepared in conformity with the provisions of chapter 58, except that the time for beginning construction, as specified by § 732 thereof, shall begin within one year from the date the lands, described in the said request to the board, are segregated to the state. The maps showing the proposed irrigation works and the lands to be irrigated shall be prepared in accordance with the regulations of the state engineer's office and the rules of the department of the interior. [L. 1905, ch. 38, § 9; R. S. 1899, § 942; L. 1905, ch. 79.]

§ 669. Requests and proposals to be submitted to state engineer. Immediately upon receipt of any request and proposal as designated in § 666, it shall be the duty of the commissioner of public lands to examine the same and ascertain if it complies with the rules of the board and the regulations of the department of the interior. If it does not, it is to be returned for correction; but if it does so comply, it shall be submitted to the state engineer, who shall examine the same and make a written report to the board, stating whether or not the proposed works are feasible; whether the proposed diversion of the public waters of the state will prove beneficial to the public interest; whether there is sufficient unappropriated water in the source of supply, and whether or not a permit to divert and appropriate water through the proposed works has been approved by him; whether the capacity of the proposed works is adequate to reclaim the land described; whether or not the proposed cost of construction is reasonable; and whether or not the maps filed in his office comply with the requirements of said office, and the regulations of the department of the interior; also, whether or not the lands proposed to be irrigated are desert in character, and such as may be properly set apart under the provisions of the aforesaid act of congress and the rules and regulations of the department of the interior thereunder. Whenever the state engineer shall be unable, from an examination of the maps and field notes submitted for his examination, to determine whether or not the proposed irrigation works are feasible and adequate, whether or not the proposed cost of construction is reasonable, or whether or not the proposed diversion of the public water is beneficial to public interest, and whether or not the lands proposed to be irrigated are of such a character as to come under the provisions of the aforesaid act of congress, the board may direct the engineer to make, or cause to be made, by some qualified assistant, such survey or examination as will enable him to report intelligently thereon to the board. [L. 1895, ch. 38, § 10; R. S. 1899, § 943.]

§ 670. Report of engineer. On receipt of the report of the state engineer, the commissioner of public lands shall place the request and proposal, with the engineer's report thereon, before the board for its consideration. In case of approval the board shall instruct the commissioner of public lands to file in the local land office a request for the withdrawal of the land described in said proposal. [L. 1895, ch. 38, § 11; R. S. 1899, § 944.]

§ 671. Requests and proposals not approved. When requests and proposals are not approved by the board, the board shall notify the parties making such proposal of such action, and the reason therefor. The parties so notified shall have sixty days in which to submit a satisfactory proposal, and the board may, at its discretion, extend the time to six months. [L. 1895, ch. 38, § 12; R. S. 1899, § 945.]

§ 672. Withdrawal of land—Bond. Upon the withdrawal of the land by the department of the interior, it shall be the duty of the board to enter into a contract with the parties submitting the proposal, which contract shall contain complete specifications of the location, dimensions, character and estimated cost of the proposed ditch, canal or other irrigation work; the price and terms per acre at which such works and perpetual water rights shall be sold to settlers; the price and terms upon which the state is to dispose of the land to settlers; Provided, That such price and terms for irrigation works, water rights and for lands to be disposed of by the state to settlers shall, in all cases, be reasonable and just. This contract shall not be entered into on the part of the state until the withdrawal of these lands by the department

of the interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bond shall be in a penal sum equal to five per cent. of the estimated cost of the works, and to be conditioned for the faithful performance of the provisions of the contract with the state. [L. 1895, ch. 38, § 13; R. S. 1899, § 946.]

§ 673. Terms of contract. No contract shall be made by the board which requires a greater time than five years for the construction of the canal, works or irrigation system, and all contracts shall be conditioned that active construction work shall begin within six months from the date of the contract, and that at least one-tenth of the construction work shall be completed within one year of the date of the contract; that at least one-third of the construction work shall be completed within two years from the date of the contract, and that construction shall be prosecuted diligently and continuously to completion; and that a cessation of work under the contract of the state for a period of ninety days during the months of May, June, July, August, September, October and November, after the second year will forfeit to the state all right under the said contract. [L. 1895, ch. 38, § 14; R. S. 1899, § 947; L. 1909, ch. 160, § 2.]

§ 674. Failure to fulfill contract. Upon the failure of any parties, having contracts with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, it shall be the duty of the commissioner of public lands to give such parties written notice of such failure, and if, after a period of sixty days from the sending of such notice, they shall have failed to proceed with the work, or to conform to the specifications of their contract with the state, unless said parties shall show to the satisfaction of the state land board good and sufficient reason for such delay and failure to complete said works or conform to said specifications and demonstrate to the satisfaction of said state land board their financial ability and intentions to proceed with said work in good faith, the bond and contract of such parties and all work constructed thereunder shall be at once and thereby forfeited to the state, and it shall be the duty of the board at once so to declare and to give notice once each week, for a period of four weeks, in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital, in like manner and for a like period, of the forfeiture of said contract, and that upon a day fixed, proposals will be received at the office of the commissioner of public lands, in the capitol at Cheyenne, for the purchase of the incompleted works and for the completion of said contract. The time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received from the sale of partially completed works under the provisions of § 673, shall first be applied to the expenses incurred by the state in their forfeiture and disposal, to satisfying the bond, and the surplus, if any exists, shall be paid to the original contractors with the state; Provided, however, That the board may, at its discretion, accept from any parties unable for any reason to fulfill the terms of their contract with the state, the full release, relinquishment and surrender of any rights acquired from the state under and by virtue of said contract, and may thereupon abrogate the same and release said parties from the conditions of the said contract and bond, and may proceed at its discretion to enter into a new contract with other parties, if such there be, for the completion of the works so surrendered. [L. 1899, ch. 6, § 2; R. S. 1899, § 948.]

§ 675. Restrictions. Nothing in this chapter shall be construed as authorizing the board to obligate the state to pay for any work constructed under any contract, or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state. [L. 1895, ch. 38, § 16; R. S. 1899, § 949.]

§ 676. Lands—When open for settlement. Immediately upon the withdrawal of any land for the state by the department of the interior, and the inauguration of work by the contractor, it shall be the duty of the board, by publication once each week, in one newspaper of the county in which said lands are situated and in one newspaper at the state capital, for a period of four weeks, to give notice that said land is open for settlement, the price for which said land will be sold to settlers by the state, and the contract price at which settlers can purchase perpetual water rights. [L. 1895, ch. 38, § 17; R. S. 1899, § 950.]

§ 677. Who may make application. Any citizen of the United States or any person having declared his intention of becoming a citizen of the United States, over the age of twenty-one years, may make application, under oath, to the board, to enter any of said land in an amount not to exceed one hundred and sixty (160) acres for any one person; and such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of congress and the laws of this state relating thereto, and that the applicant has never received the benefit of the provisions of this act to an amount greater than one hundred and sixty (160) acres, including the number of acres specified in the application under consideration. Such application must be accompanied by an original signed copy or a certified copy of a contract for a water right, made and entered into by the party making the application with the person, company or association who have been authorized by the board to furnish water for the reclamation of said lands; and if said applicant has at any previous time entered lands under the provisions of this chapter, he shall so state in his application, together with description, date of entry and location of said land. The board shall thereupon file in its office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of twenty-five cents per acre, which shall be paid as a partial payment on the land if the application is allowed; and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, the twenty-five cents per acre accompanying it shall be returned to the applicant; Provided, That where the construction company fails to furnish water to any settler under the provisions of its contract with the state, the state shall refund to such settler, all payments that he shall have made to the state. The board shall dispose of all lands accepted by the state under the provisions of this act at a uniform price of fifty cents per acre, half to be paid at the time of entry and the remainder at the time of making final proof by the settler; and, Provided, further, That whenever any citizen of the United States, or any person having declared his intention of becoming a citizen of the United States, shall make application as provided in this section to enter any of said land in an amount not exceeding one hundred and sixty (160) acres, and shall further prove to the satisfaction of the board that he or she is the father or mother of eight living children, it shall be the duty of the board to permit the application for entry by him or her without charge and to issue a certificate of location to such

SEC. 676. Upon receipt of notice by the contracting company that water for beneficial irrigation can be furnished for all or any part of the lands in any segregation list at stated time, it being shown to the satisfaction of the board that the contracting company will be able to deliver water at the said time, it shall be the duty of the board, by publication, at the expense of the contracting company, in one newspaper in the county in which said lands are situated and such other newspaper or newspapers as may be designated by the contracting company, to give notice that certain lands, generally described, are open for settlement; that the land will be sold at 50 cents per acre by the State and that proportionate interests in the irrigation system for a perpetual water supply can be purchased at the price named and water for beneficial irrigation can be furnished on the date named, and such other information as the board shall deem advisable.

applicant without charge, and to dispose of such lands to said applicant upon final proof being made. [L. 1895, ch. 38, § 18; R. S. 1899, § 951; L. 1909, ch. 35.]

§ 678. **Final proof—Conditions.** Within one year after any person, company of persons, association or incorporated company authorized to construct irrigation works under the provisions of this chapter, shall have notified the settlers under such works that they are prepared to furnish water under the terms of their contract with the state, the said settlers shall cultivate and reclaim not less than one-sixteenth part of the land filed upon, and within two years after the said notice, the settler shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within three years from the date of said notice, the settler shall appear before the commissioner of public lands, who is hereby authorized to administer oaths in matters pertaining to the state or Carey act lands in Wyoming, a judge or clerk of the district court or commissioner of the United States district court within the state of Wyoming, and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he has a perpetual water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he has been an actual settler thereon, or has been for the three years prior to date of making his final proof, a settler in the colony or settlement in the immediate vicinity thereof, and has cultivated and irrigated not less than twenty acres of said tract, and such proof, further if any, as may be required by the regulations of the department of the interior and the board. The officer taking this proof shall be entitled to a fee of two dollars, which fee shall be paid by the settler and shall be in addition to the price paid to the state for the land. All proofs so received shall be submitted by the commissioner of public lands to the board, and shall be accompanied by the last and final payment for said land, and on the approval of same by the said board, they shall be forwarded to the secretary of the interior with a request that a patent to said lands be issued to the state; Provided, That when the commissioner of public lands shall take such final proof, all fees received by him shall be turned into the state treasury. [L. 1895, ch. 38, § 20; R. S. 1899, § 953; L. 1909, ch. 160, § 3.]

§ 679. **Assessments.** Companies, associations, or corporations operating or controlling irrigation systems, ditches, or reservoirs or other devices for the distribution of water for irrigation shall be authorized to levy and collect such reasonable and necessary assessments for the cost of operation, maintenance and repairs of such irrigation systems, ditches or reservoirs as may be authorized by a majority of the members of such companies, or associations, or fixed in the manner provided by the by-laws of such corporation. Payment of such assessments shall be the necessary requisite for the use of such reservoirs, irrigation systems or ditches for the storage or conveyance of water for the lands described in contracts for or deeds to proportionate interests in such reservoirs, irrigation systems, and ditches upon which assessments are made, and in the event such assessments remain due and unpaid more than ten days after the date fixed as the date of the payment for the purpose, such companies, associations and corporations are authorized to close down any headgate or other diverting or measuring device used by any delinquent, or by any person in possession of or using such lands, and to refuse to allow the use of such reservoirs, irrigation systems and ditches for the purpose of storing water for or conveying water to the lands of such delinquent, until such repair or maintenance assess-

ments shall have been paid. Such companies, associations and corporations shall have a lien on the proportionate interests in such reservoirs, irrigation systems and ditches, and upon the lands described in contracts for or deeds to such proportionate interests for the amount of any unpaid assessments which may be enforced in a court of competent jurisdiction, as in the case of other liens. In all suits or actions to obtain a judgment on such account and to enforce the lien, when the plaintiff or complainant shall obtain judgment or decree, the costs, together with twenty-five dollars for attorney's fees, shall be taxed or recovered from the adverse party. No restraining order, or order of injunction shall be issued against any such company, association or corporation unless applicant for same shall file a sufficient bond conditioned upon the immediate payment of all delinquent assessment if such shall be found by a competent court to be reasonable and just. [L. 1909, ch 160, § 5.]*

§ 680. **Patents.** Upon the issuance of a patent to any lands by the United States to the state, notice shall be forwarded to the settler upon such land. It shall be the duty of the board, under the signature of its president, and attested by its secretary, to issue a patent to said lands from the state to the settler. [L. 1895, ch. 38, § 21; R. S. 1899, § 954.]

§ 681. **Water rights attach to land.** The water rights to all lands acquired under the provisions of this chapter shall attach to and become appurtenant to the land as soon as title passes from the United States to the state. [L. 1895, ch. 38, § 21; R. S. 1899, § 955.]

§ 682. **Lien created.** Any person, company or association furnishing water for any tract of land shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired. [L. 1895, ch. 38, § 21; R. S. 1899, § 956.]

§ 683. **Foreclosure.** The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the county clerk of the county where said land is situate. Upon the default of any of the deferred payments secured by any lien under the provisions of this chapter, the person, company of persons, association or incorporated company holding or owning said lien, may foreclose the same according to the terms and conditions of the contract granting and selling to the settler the water right. [L. 1895, ch. 38, § 21; R. S. 1899, § 957.]

§ 684. **Notice.** All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situate for six consecutive weeks, and shall be sold to the highest bidder at the front door of the court house of the county, or such place as may be agreed upon by the terms of the aforesaid contract. And the sheriff of said county shall in all such cases give all notices of sale and shall sell all such land and water rights and shall make and execute a certificate of sale to the purchaser thereof, and at such sale no person, company of persons, association or incorporated company, owning and holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on said deferred payment

for said water right and land, and the costs incurred in making the sale of said land and water right. [L. 1895, ch. 38, § 21; R. S. 1899, § 958.]

§ 685. Redemption. At any time within nine months after the foreclosure sale by the sheriff of the land and water rights as aforesaid, the original owner against whom the lien has been foreclosed, may apply to the person, company of persons, association or incorporated company purchasing at such sale, to redeem such land and water rights, and the purchaser shall assign the certificate of sale of such land and water rights to such original owner, upon the payment by him within such nine months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon. Where the lien holder becomes the purchaser at such foreclosure sale, if such lands and water rights are not redeemed by the original owner within nine months, then at any time within three months after the expiration of such nine months, any person desiring to settle upon and use such lands and water rights, may apply to the purchaser at such foreclosure sale to redeem such land and water rights, and such purchaser shall assign the certificate of sale of such land and water rights to the person desiring to redeem the same, upon the payment by him, within such three months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon. [L. 1895, ch. 38, § 21; R. S. 1899, § 959.]

§ 686. Certificate of sale. Upon issuing any certificate of sale, it shall be the duty of the sheriff to file for record in the office of the county clerk of the county where such land is situated, a certified copy of such certificate of sale, and in case the original owner shall redeem the land and water rights sold as aforesaid, he shall file for record in the office of such county clerk, the certificate of sale assigned to him by the purchaser as aforesaid, upon his redemption of such land and water rights. [L. 1895, ch. 38, § 21; R. S. 1899, § 960.]

§ 687. Sheriff to execute deed. In case the land and water rights shall be redeemed by any person other than the original owner, the sheriff shall, upon presentation of such certificate, issue a deed for such land and water rights to the person so redeeming the same. If the land and water rights shall not be redeemed by any person within the time and in the manner hereinbefore provided, it shall be the duty of the sheriff, upon presentation of the certificate of sale by the original purchaser, to issue a deed to such purchaser. [L. 1895, ch. 38, § 21; R. S. 1899, § 961.]

§ 688. Disposal of proceeds of sale. Where such lands and water rights are not purchased by the lien holder of such foreclosure sale, it shall be the duty of the sheriff to first pay the lien holder out of the proceeds of such sale, the amount of the lien together with all interest, costs and fixed charges thereon, and to pay any balance remaining to the person against whom such lien has been foreclosed, and for his services in such cases the sheriff shall receive the same fees as are provided by law in civil cases. [L. 1895, ch. 38, § 21; R. S. 1899, § 962.]

§ 689. Maps. The maps in the office of the board of the lands selected under the provisions of this chapter, shall show the location of the canals or other irrigation works approved in the contract with the board, and all lands filed upon shall be subject to the rights of way of such canals or irrigation works. Said right of way to embrace the entire width of the canal, and such additional width as may be required for its proper operation and maintenance, the width of right of way to

be specified in the contracts provided for in this chapter. [L. 1895, ch. 38, § 22; R. S. 1899, § 963.]

§ 690. Rules of board. The board shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the entry of and payment for the land by settlers, and for the forfeiting of entry by settlers upon failure to comply with the provisions of this chapter. There shall be kept in the office of the board, for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of land by settlers. It shall require from each person, company of persons, association or incorporated company engaged in the construction of irrigation works, under the provisions of this chapter, an annual report, to be submitted to the board on or before November first of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation work is prepared to supply with water, and such other data as the board sees fit to require. The rules required by this section may be waived in the case of irrigation works being constructed by a person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves. [L. 1895, ch. 38, § 23; R. S. 1899, § 964.]

§ 691. Fees. The board shall prescribe the duties of all its employes and shall collect the following fees: For filing each application, one dollar; for filing each final proof, one dollar; for issuing each patent, one dollar; for making certified copies of papers or records, the same fee as provided for to be charged by the secretary of state for like services. The money collected for fees shall be paid to the treasurer of the state and by him credited to the fund created by virtue of this chapter. [L. 1895, ch. 38, § 24; R. S. 1899, § 965.]

§ 692. Report. The board shall issue, on or before November thirtieth of each year, a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal subdivisions of land intended to be reclaimed, the estimated cost of said irrigation works, the price of water rights from such irrigation works, and the terms of payment for both water rights and land. Not less than five thousand copies of such report shall be printed for gratuitous distribution. [L. 1905, ch. 38, § 25; R. S. 1899, § 966.]

§ 693. Suits—How brought. All suits or actions brought by the board, under the provisions of this chapter, shall be instituted by the board, in the name of the people of the state of Wyoming. [L. 1905, ch. 38, § 26; R. S. 1899, § 967.]

§ 694. Funds used for reclamation. Pursuant to the act of congress, approved August 18th, 1894 (28 Stat., 372-422), all moneys received by the state of Wyoming from the payments of fifty cents an acre received on lands segregated under what is commonly known as the Carey act, and all moneys received as fees pursuant to operations of the Carey act, are hereby appropriated for the purpose of reclaiming school or granted lands belonging to the state of Wyoming, and lands which may be hereafter granted or selected for the said state of Wyoming for any purpose whatsoever. [L. 1909, ch. 63, § 1.]

§ 695. Water rights for other lands. The state boards of land commissioners are hereby authorized to purchase water rights or pro-

portionate interests in canals, reservoirs or irrigation systems for the purpose of reclaiming school and other granted lands. Lands for which water rights become appurtenant may be leased by the board at a price which will return an equitable income, or may be sold upon the following terms and conditions: The land shall be offered at public auction at the front door of the court house of the county in which the land is situated, after being advertised for four weeks, as required by law. Thirty per cent. of the purchase price of the land must be paid in cash on the day of sale. The purchaser shall, before the sale is consummated, enter into a contract for the purchase of a water right or proportionate interest in the irrigation system which will supply water for the said land, which may be conditioned on not to exceed twenty annual payments with interest at six per cent. per annum. Delinquent payments shall bear interest at the rate of eight per cent. per annum until paid. Moneys received for the sale of land, and the interest thereon, shall be placed in the proper permanent land fund in accordance with the purpose for which the land was granted to the state. Moneys received from the sale of water right contracts and the interest thereon shall be turned into the state treasury to the credit of the arid land fund, and shall immediately become available for the purpose of purchasing other water rights or proportionate interests in irrigation systems. [L. 1909, ch. 63, § 2.]

§ 696. Reports and classification. The boards shall from time to time secure reports from the state engineer or his deputies or assistants or from other qualified persons covering the lands for which it is proposed to secure water rights and lands for which applications to purchase have been filed, and shall file same until it shall seem to the advantage of the state to secure water rights for the said land or to offer same for sale. [L. 1909, ch. 63, § 3.]

CHAPTER 58.

WATER RIGHTS.

§ 724. Water right defined. A water right is a right to use the water of the state, when such use has been acquired by the beneficial application of water under the laws of the state relating thereto, and in conformity with the rules and regulations dependent thereon. Beneficial use shall be the basis, the measure and limit of the right to use water at all times, not exceeding in any case, the statutory limit of volume. Water being always the property of the state, rights to its use shall attach to the land for irrigation, or to such other purpose or object for which acquired in accordance with the beneficial use made and for which the right receives public recognition, under the law and the administration provided thereby. Water rights cannot be detached from the lands, place or purpose for which they are acquired, without loss of priority. [L. 1909, ch. 68, § 1.]

§ 725. Preferred uses defined. Water rights are hereby defined as follows according to use: Preferred uses shall include rights for domestic and transportation purposes; existing rights not preferred, may be condemned to supply water for such preferred uses in accordance with the provisions of the law relating to condemnation of property for public and semi-public purposes. Such domestic and transportation purposes shall include the following: First—Water for drinking purposes for both man and beast. Second—Water for municipal purposes Third—Water for the use of steam engines and for general railway use.

Fourth—Water for culinary, laundry, bathing, refrigerating, (including the manufacture of ice), and for steam and hot water heating plants. The use of water for irrigation shall be superior and preferred to any use where turbine or impulse water wheels are installed for power purposes. [L. 1909, ch. 68, § 2.]

§ 726. Change to prefererd use. Where it can be shown to the board of control under the provisions hereof, that a preferred use is to be made, the procedure for a change of such use shall embrace a public notice, an inspection and hearing if necessary by and before the proper division superintendent a report of such superintendent to the board of control, and an order by said board. If the change of use is approved, just compensation shall be paid and under the direction of the board, proper instruments shall be drawn and recorded. [L. 1909, ch. 68, § 3.]

§ 727. Application for permit. Any person, association or corporation hereafter intending to acquire the right to the beneficial use of the public water of the state of Wyoming shall, before commencing the construction, enlargement or extension of any ditch, canal or other distributing works, or performing any work in connection with said construction, or proposed appropriation, make an application to the state engineer for a permit to make such appropriation. Such application must set forth the name and postoffice address of the applicant, the source of the water supply, the nature of the proposed use, the location and description of the proposed ditch, canal or other work, the time within which it is proposed to begin construction, the time required for completion of construction and the time required for the complete application of the water to the proposed use. Any person who shall willfully divert or use water to the detriment of others without compliance with law shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding one hundred dollars or imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment; and the possession or use of water, except when a right of use is acquired in accordance with law, shall be prima facie evidence of the guilt of the person using it. [L. 1895, ch. 45, § 1; R. S. 1899, § 917; L. 1907, ch. 86, § 13.]

Whalon v. Canal Co., 11 Wyo. 342, 71 Pac. 995; Johnston v. Irrigation Co., 13 Wyo 228, 79 Pac. 22.

§ 728. Duty of state engineer. In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of land proposed to be irrigated, with the total acreage to be reclaimed, as near as may be. On receipt of this application, which shall be of a form prescribed by the state engineer, it shall be the duty of that officer to make an endorsement thereon of the date of its receipt, and to make a record of such receipt in some suitable book in his office. It shall be his duty to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of proposed use. If, upon such examination the application is found defective, it shall be the duty of the state engineer to return the same for correction; the date of such return, with the reasons therefor, shall be endorsed on the application and a record made thereof in the book kept for recording receipts of such applications. A like record shall be kept of the date of the return of corrected applications, and of the date of the refusal and return of applications rejected. [L. 1895, ch. 45, § 1; R. S. 1899, § 918.]

§ 729. Approval of application. All applications which shall comply with the provisions of this chapter, and with the regulations of the

engineer's office, shall be recorded in a suitable book kept for that purpose; and it shall be the duty of the state engineer to approve all applications made in proper form, which contemplate the application of the water to a beneficial use and where the proposed use does not tend to impair the value of existing rights, or be otherwise detrimental to the public welfare. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, it shall be the duty of the state engineer to reject such application and refuse to issue the permit asked for. [L. 1895, ch. 45, § 1; R. S. 1899, § 919.]

Whalon v. Canal Co., 11 Wyo. 342, 71 Pac. 995.

§ 730. Application—How endorsed. The refusal or approval of an application shall be endorsed thereon and a record made of such endorsement in the state engineer's office. The application so endorsed shall be returned to the applicant. If approved, the applicant shall be authorized, on receipt thereof, to proceed with the construction of the necessary works, and to take all steps required to apply the water to a beneficial use, and to perfect the proposed appropriation. If the application is refused, the applicant shall take no steps toward the prosecution of the proposed work, or the diversion and use of the public water so long as such refusal shall continue in force. [L. 1895, ch. 45, § 1; R. S. 1899, § 920.]

Whalon v. Canal Co., 11 Wyo. 342, 71 Pac. 995.

§ 731. Additional information. Before either approving or rejecting an application, the state engineer may require such additional information as will enable him to properly guard the public interests, and may, in the case of applications proposing to divert more than twenty-five cubic feet of water per second of time, or to reclaim over one thousand acres of land, require a statement of the following facts: In case of incorporated companies, he may require the submission of the articles of incorporation, the names and places of residence of its directors and officers, and the amount of its authorized and of its paid up capital. If the applicant is not an incorporated company, he may require a showing as to the name or names of the party or parties proposing to construct the work, and a showing of facts necessary to enable him to determine whether or not they have the financial ability to carry out the proposed work, and whether or not the said application has been made in good faith. [L. 1895, ch. 45, § 1; R. S. 1899, § 921.]

Whalon v. Canal Co., 11 Wyo. 342, 71 Pac. 995.

§ 732. Limitation on time of completing work. In his endorsement of approval on any application, the state engineer shall require that actual construction work shall begin within one year from the date of such approval, and that the construction of any proposed irrigation work shall be completed within a period of five years from the date of such approval. He may limit the applicant to a less period of time for the completion of work than is asked for, and likewise, the perfecting of the proposed right for a less period than named in the application. The state engineer shall have authority for good cause shown, to extend the time within which irrigation or other works shall be completed under any permit therefor issued by said engineer. [L. 1895, ch. 45, § 1; R. S. 1899, § 922.]

§ 733. Appeals. Any applicant feeling himself aggrieved by the endorsement made by the state engineer upon his application, may, in writing, in an informal manner and without pleadings of any character,

appeal within sixty days of the date of such indorsement, and notice thereof to the applicant, to the board of control for an examination and reversal of any such action of the state engineer. Upon receipt of such an appeal, the secretary of the board of control shall notify the members of the board of control and upon receipt of replies from them shall fix a date, as early as may be possible, when such appeal shall be heard before the board. All parties directly interested in the appeal and those who claim an adverse interest thereto, shall be duly notified and shall be heard at such hearing if appearance is made. Any person or persons feeling himself or themselves aggrieved by any order or determination of the board of control in cases embracing such appeals from the state engineer, may within six months from the date of such action by the board of control, and notice thereof to the applicant take an appeal to the district court of the county in which the greatest use of water is proposed to be made under the application. The procedure in such appeals shall be in conformity with the provisions of §§ 780 to 788, both inclusive, and § 798 of the Compiled Statutes of Wyoming. The attorney general shall, in such cases, represent the state board of control. [L. 1895, ch. 45, § 1; R. S. 1899, § 923; L. 1909, ch. 64.]

§ 734. Maps to be filed. Each application for permit to appropriate water for beneficial uses must be accompanied by a map or plat in duplicate, showing accurately the location and extent of the proposed work. These maps or plats must be drawn on tracing linen, on a scale not less than two inches to the mile; they must show the location of the headgate or point of diversion by courses and distances from some government corner; they must show the actual location of the ditch or canal, or water line of the reservoir, and must show, wherever section lines are crossed, the distance to the nearest government corner. The map or plat must show the course of the river, stream or other source of supply, the location and area of all lands proposed to be reclaimed, the position and area of all reservoirs or basins intended to be created for the purpose of storing water; the location of the intersection with all other ditches, canals, laterals or reservoirs which are caused by this work, or with which connections are made; but all streams and all intersecting ditches, canals and reservoirs not connected with the proposed work, must be represented in ink of different color from that used to represent the proposed work. These maps must contain the name of the proposed work, and, where possible, the number of the permit. They must, in addition, have the name or names of the applicant or applicants and a certificate of the surveyor, giving the date of survey, his name and postoffice address. [L. 1895, ch. 45, § 2; R. S. 1899, § 924.]

Johnston v. Irrigation Co., 13 Wyo. 228, 79 Pac. 22.

§ 735. Engineer must examine maps. It shall be the duty of the state engineer to examine these maps or plats and to ascertain if they agree with the description contained in the application, and when found to agree, or made to agree, to approve the same, file one copy in his office and return the other, approved, to the party filing them. [L. 1895, ch. 45, § 2; R. S. 1899, § 925.]

§ 736. Additional description. In case of ditches or canals carrying more than fifty cubic feet of water per second, the engineer may require, in addition to the maps or plats above described, the following: A longitudinal profile of the ditch showing the bottom and proposed water line; the horizontal scale of this line shall not be less than one inch to one thousand feet, and the vertical scale not less than one inch to twenty feet. [L. 1895, ch. 45, § 2; R. S. 1899, § 926.]

§ 737. Requirements of plans. The engineer may require, in addition to the maps and plats above described, a plan showing cross-sections at a sufficient number of points to show the different forms which the ditch, when completed, will take, and showing what proportion of the water is to be conveyed in excavation and what proportion to be conveyed in fill. These plans shall be drawn on a horizontal and vertical scale of one inch to twenty feet. Plans of any dams, cribs, embankments or other proposed works to obstruct any river, stream, lake or pond, or other source of water supply, shall be drawn on a longitudinal scale of not less than one inch to two hundred feet, and for cross-sections on a scale of not less than one inch to twenty feet; and shall show what material is intended to be used and placed in such work. Timber, brush, stone or other material except earth used in such works shall be shown in detail on a plan, the scale of which shall not be less than one inch to four feet. The maps of all proposed reservoirs shall show the surface of the ground under water, and a sufficient number of lines of level shall be shown so that the contents of the reservoir or basin may be approximately determined. If the levels shall be shown by contour lines they shall be on a scale sufficiently large to show vertical levels not exceeding five feet, and with all such reservoir plans there shall be furnished a plan, on a scale of not less than one inch to four feet, showing the method of providing a wasteway for such reservoir, and method of drawing off the water from such reservoir or basin. If the state engineer deems it necessary he may require the submission of complete plans and specifications for his approval. He may also require the filing of field notes of canal and reservoir surveys. [L. 1895, ch. 45, § 2; R. S. 1899, § 927; L. 1907, ch. 86, § 14.]

§ 738. Certificate to appropriator. Upon it being made to appear to the satisfaction of the board of control, that any appropriation has been perfected in accordance with such application, and the endorsement thereon by the state engineer, it shall be the duty of the board of control, by the hand of its president, attested under the seal of the secretary, to send to the county clerk a certificate of the same character as that described in § 778, which said certificate shall be recorded in the office of the county clerk as provided in said section. [L. 1890-91, ch. 8, § 36; R. S. 1899, § 928.]

Comrs. v. Perkins, 5 Wyo. 168, 178, 38 Pac. 915; Whalon v. Canal Co., 11 Wyo. 343, 71 Pac. 995.

§ 739. Date of priority. The priority of such appropriation shall date from the filing of the application in the engineer's office. [L. 1890-91, ch. 8, § 37; R. S. 1899, § 929.]

Whalon v. Canal Co., 11 Wyo. 342, 71 Pac. 995.

§ 740. Maintenance of headgates. The owner or owners of any ditch or canal shall maintain, to the satisfaction of the division superintendent of the division in which the irrigation works are located, a substantial headgate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water commissioner; and such owners shall construct and maintain, when required by the division superintendent, flumes or other measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water commissioner in determining the amount of water that is to be diverted into said ditch from the stream, or taken from it by the various users. Any and every owner or manager of a reservoir, located across or upon the bed of a natural stream, shall be required to construct and maintain, when required by the division superintendent, a flume or measuring device of a plan to be approved by

the state engineer, below such reservoir at a point not to exceed 600 feet distant therefrom, and a flume or measuring device above such reservoir on each and every stream or source of supply discharging into such reservoir, for purpose of assisting the water commissioner or superintendent in determining the amount of water to which prior appropriators are entitled and thereafter diverting it for such prior appropriators' use. When it may be necessary for the protection of other water users, the division superintendent has authority to require flumes to be installed along the line of any ditch. If any such owner or owners of irrigation works shall refuse or neglect to construct and put in such headgates, flumes or measuring devices after ten days' notice to do so by division superintendent, it shall be the duty of the water commissioner of the district in which such headgate is located, on order of the division superintendent, to close such ditch to the passage of water, and the same shall not be opened or any water diverted from the source of supply, under the penalties prescribed by law for the opening of headgates lawfully closed, until the requirements of the division superintendent as to such headgate, flumes or measuring device have been complied with, and if any owner, or manager of a reservoir located across the bed of a natural stream shall neglect or refuse to put in such measuring device after ten days' notice to do so by the division superintendent, the water commissioner shall open the sluice gate or outlet of such reservoir and the same shall not be closed under penalties of the law for changing or interfering with headgates, until the requirements of the division superintendent as to such measuring devices are complied with. [L. 1890-91, ch. 8, § 46; R. S. 1899, § 930; L. 1901, ch. 92; L. 1907, ch. 86, §15.]

§ 741. Rights limited to use. Rights to the use of water shall be limited and restricted to so much thereof as may be necessarily used for irrigation or other beneficial purposes as aforesaid; irrespective of the carrying capacity of the ditch, and all the balance of the water not so appropriated shall be allowed to run in the natural stream from which such ditch draws its supply of water, and shall not be considered as having been appropriated thereby; and in case the owner or owners of any such ditch, canal or reservoir shall fail to use the water therefrom for irrigation or other beneficial purposes during any five successive years, they shall be considered as having abandoned the same, and shall forfeit all water rights, easements and privileges, appurtenant thereto, and the water formerly appropriated by them may be again appropriated for irrigation and other beneficial purposes, the same as if such ditch, canal or reservoir had never been constructed; neither shall the owner or owners of such ditch, canal or reservoir have any right to receive from others any royalty for the use of water carried thereby, but every such owner or owners having a surplus of water and furnishing the same to others from any ditch, canal or reservoir as herein provided, shall be considered common carriers and shall be subjected to the same laws that govern common carriers. [L. 1888, ch. 55, § 14; R. S. 1899, § 895; L. 1905, ch. 39; L. 1907, ch. 86, § 12.]

Farm Investment Co. v. Carpenter, 9 Wyo. 126, 61 Pac. 258, 50 L. R. A. 747.

§ 742. Legal standard. A cubic foot of water per second of time shall be the legal standard for the measurement of water in this state, both for the purpose of determining the flow of water in natural streams, and for the purpose of distributing water therefrom. [L. 1890-91, ch. 8, § 38; R. S. 1899, § 968.]

(Note:—See also articles I and VIII, constitution.—Compiler.)

CHAPTER 59.

RESERVOIR PERMITS.

§ 743. Reservoirs—Application for—Permit. Any person, corporation, association, or organization, of any nature whatsoever, hereafter intending to store or impound, for a beneficial use, any of the unappropriated waters of the state of Wyoming, shall, before commencing construction of any works for such purpose, or performing any work in connection with said proposed construction, make an application to the state engineer, for a permit to construct a reservoir. The application must set forth the name and postoffice address of the applicant; the source of the water supply; the nature of the proposed use; the location and description of the proposed work; the time within which it is proposed to begin construction, and the time required for the completion of construction. [L. 1903, ch. 69, § 1.]

§ 744. Procedure. All applications under this chapter shall be subject to the provisions of §§ 728 to 737 inclusive, and §§ 825, 826, 827, which set forth the duties and authority of the state engineer and provide for the protection of the rights of applicants; Provided, That an enumeration of any lands proposed to be irrigated under this chapter shall not be required in the primary permit. The party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall file with the state engineer an application for permit, to be known herein as the secondary permit, in compliance with the provisions of §§ 727 to 737 inclusive. Said application shall refer to such reservoir for a supply of water and the state engineer shall not approve the said application and issue secondary permit until the applicant thereunder shall show to such state engineer by documentary evidence that he had entered into an agreement with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When beneficial use has been completed and perfected under the said secondary permit the division superintendent shall take the proof of the water user under such permit and the final certificate of appropriation shall refer to both the ditch described in the secondary permit and the reservoir described in the primary permit. [L. 1903, ch. 69, § 2; L. 1907, ch. 86, § 16.]

§ 745. Use of bed of stream. Whenever the owner, manager or lessee of a reservoir, constructed under the provisions of this chapter, shall desire to use the bed of a stream, or other water course, for the purpose of carrying stored or impounded water, from the reservoir to the consumer thereof, he shall, in writing, notify the water commissioner of the district in which the stored or impounded water is to be used, giving the date when it is proposed to discharge water from such reservoir, its volume in acre feet and the names of all persons and ditches entitled to its use. It shall then be the duty of such water commissioner to close, or so adjust the headgates of all ditches of appropriators from the stream or water course, not entitled to the use of such stored water, as will enable those having the right, to secure the volume to which they are entitled. The water commissioner shall keep a true and just account of the time spent by him in the discharge of his duties as defined in this section, and it shall be the duty of the county commissioners, of the county wherein the expense is incurred, to present a bill of one-half the expense so incurred to the reservoir owner, manager, or lessee, and if such owner, manager, or lessee shall neglect for three days, after the presentation of such bill of costs, to pay same, the said costs shall be made a charge upon said reservoir and shall be collected as delinquent

taxes until the complete payment of such bill of costs has been made. [L. 1903, ch. 69, § 3.]

§ 746. Assistant engineer—Appointment. If, in the opinion of the state engineer, the same shall be necessary for the protection of the various interests involved, or likely to be affected by any construction work, undertaken under the provisions of this chapter, except where the work is undertaken by the United States, it shall be the duty of the said state engineer to appoint an assistant engineer, who shall, under the direction of the state engineer, superintend and direct such work during its actual prosecution, and whose orders shall be received and obeyed by whomsoever may have charge of the work; Provided, That appeal from such directions or orders may be made to the state engineer, whose decision shall be final; and Provided, further, That the time, or times, when or within which construction work shall be undertaken or prosecuted, shall be under the control of the state engineer, and it shall be unlawful to proceed with or continue on such work when authority therefor has been withheld and while it shall remain in force. [L. 1903, ch. 69, § 4.]

§ 747. Estimate of costs furnished by state engineer. Before appointing any assistant to superintend any work contemplated by this chapter, the state engineer shall furnish to those undertaking the work an estimate of the cost of such superintendence for such period, not exceeding sixty days, as he may deem expedient, and the amount so estimated shall be at once paid to the state engineer by those undertaking the work, and shall be used by him in payment of services rendered by such assistant; Provided, That at the end of the period for which funds were advanced, any unexpended balance shall be returned to the persons advancing it. [L. 1903, ch. 69, § 5.]

§ 748. Permit may be cancelled—When. Failure to comply with the provisions of §§ 746 and 747 shall subject the permit to cancellation at any time during the progress of the work, and the state engineer is hereby authorized to cancel any permit wherein the provisions of the above sections have not been, or are not being, complied with, and said cancellation shall operate as a forfeiture of all rights acquired, under and by virtue of any permit theretofore approved by the state engineer; Provided, That appeal from any decision of the state engineer, rendered under this section, may be made to the board of control, and from the decision of the board of control appeal may be taken to the district court. [L. 1903, ch. 69, § 6.]

§ 749. Use. The use of water stored under the provisions of this chapter may be acquired on such terms as shall be agreed upon by and between the parties in interest. [L. 1903, ch. 69, § 7; L. 1905, ch. 14.]

§ 750. Priority. The priority of right to store or impound water under this chapter shall date from the filing of the application in the state engineer's office. [L. 1903, ch. 69, § 8.]

§ 751. Liability of owners of reservoirs. The owners of reservoirs shall be liable for all damage arising from leakage or overflow of the waters therefrom, or by floods caused by breaking of the embankments of such reservoir. [R. S. 1887, § 1356; R. S. 1899, § 974.]

Howell v. Big Horn Basin Col. Co., 14 Wyo. 24, 81 Pac. 785, 1 L. R. A. (N. S.) 596.

§ 752. Fees of witnesses. Every witness who shall attend before the court, or the judge thereof in vacation, or before the person appointed to take testimony in causes relating to water rights, under subpoena,

by request of any party, shall be entitled to the same fees and mileage as witnesses in civil cases in the district court, and shall be paid by the party requiring his testimony. [R. S. 1887, § 1357; R. S. 1899, § 975.]

CHAPTER 60.

WATER DIVISIONS AND SUPERINTENDENTS.

§ 753. Water divisions defined. The state of Wyoming is hereby divided into four water divisions, as follows: Water Division No. 1 shall consist of all lands within this state, drained by the North Platte river, and the tributaries of the North Platte river and the South Platte river, Snake river, (a tributary of Green river) and its tributaries, and Running Water creek and its tributaries. Water Division No. 2 shall consist of all lands within this state, drained by the tributaries of the Yellowstone and Missouri rivers north of the water shed of the North Platte river and Running Water creek, and east of the summit of the Big Horn mountains. Water Division No. 3 shall consist of all lands within this state drained by the Big Horn river and its tributaries, and by Clark's Fork and its tributaries. Water Division No. 4 shall consist of all lands within the state drained by the Green, Bear and Snake rivers, and the tributaries thereof; except Snake river, (a tributary of Green river), and its tributaries. [L. 1890-91, ch. 8, § 5; L. 1895, ch. 62, §§ 1, 2, 3; R. S. 1899, § 848.]

State v. Grant, 14 Wyo. 54, 81 Pac. 795.

§ 754. Water division superintendents. There shall be one superintendent for each water division, who shall be appointed by the governor, with the consent of the senate, who shall hold his office for four years, or until his successor is appointed and shall have qualified, and who shall be a resident of the water division for which he is appointed. The state engineer shall from time to time conduct examinations for candidates for the position of division superintendents, and a list of those who qualify shall be filed with the governor in accordance with the division in which they reside. The examination shall consist of questions relative to the irrigation law and its administration, the measurement of flowing water, evaporation, seepage, and common alkalis, drainage and the hydrographic features of the water division in which the candidate may reside. [L. 1890-91, ch. 8, § 13; R. S. 1899, § 849; L. 1907, ch. 86, § 3.]

Ryan v. Tutty, 13 Wyo. 131, 78 Pac. 661; State v. Grant, 14 Wyo. 54, 81 Pac. 795, 1 L. R. A. (N. S.) 588.

§ 755. Duties. Said division superintendent shall have general control over the water commissioners of the several districts within his division. He shall, under the general supervision of the state engineer, execute the laws relative to the distribution of water in accordance with the rights of priority of appropriation, and perform such other functions as may be assigned to him by the state engineer. [L. 1890-91, ch. 8, § 14; R. S. 1899, § 850.]

Ryan v. Tutty, 13 Wyo. 131, 78 Pac. 661; State v. Grant, 14 Wyo. 54, 81 Pac. 795, 1 L. R. A. (N. S.) 588.

§ 756. May make regulations. Said division superintendent shall have authority to order, in writing, the construction of suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way; he shall have the authority, and it shall be his duty to close, or cause to be closed, the headgate of any person, persons or corporations so ordered, until such time as said order is complied

with; he shall, in the distribution of water, be governed by the provisions of law relating to water rights, but for the better discharge of his duties, he shall have authority to make such other regulations to secure the equal and fair distribution of water in accordance with the rights of priority of appropriation as may, in his judgment, be needed in his division; Provided, Such regulations shall not be in violation of the laws of the state, but shall be merely supplementary to and necessary to enforce the provisions of the general laws and amendments thereto. [L. 1890-91, ch. 8, § 15; R. S. 1899, § 851; L. 1909, ch. 61.]

§ 757. Appeal from superintendent. Any person, ditch company, or ditch owner, who may deem himself injured or discriminated against by any such order or regulations of such division superintendent, shall have the right to appeal from the same to the state engineer, by filing with the state engineer a copy of the order or regulation complained of, and a statement of the manner in which the same injuriously affects the petitioner's interest. The state engineer shall, after due notice, hear whatever testimony may be brought forward by the petitioner, either orally or by affidavit and, through the division superintendent, shall have power to suspend, amend or confirm the order complained of. [L. 1890-91, ch. 8, § 16; R. S. 1899, § 852.]

§ 758. Reports of water commissioners. All water commissioners, when on duty, shall make reports whenever called upon to do so, by the division superintendent of their division. Said reports shall contain the following information: The amount of water actually coming into the district to supply ditches, canals and reservoirs; whether such supply is on the increase or decrease; what ditches, canals and reservoirs are at that time without their proper supply, and such other and further information as the division superintendent of that division may require. [L. 1890-91, ch. 8, § 1; R. S. 1899, § 853; L. 1907, ch. 86, § 4.]

§ 759. Salary. Each division superintendent of a water division shall receive a salary of fifteen hundred dollars per annum, payable in monthly installments, in full compensation for all his services, and shall, in addition thereto, be paid his actual traveling expenses when called away from home in the performance of his duties. Such superintendents shall not engage in any business which will conflict with their duties as such superintendents. [L. 1899, ch. 59, § 2; R. S. 1899, § 855; L. 1903, ch. 41, § 1; L. 1907, ch. 49.]

§ 760. Oath and bond. Before entering upon the duties of his office, such division superintendent shall take and subscribe an oath before some officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of his office, and file with the secretary of state said oath, and his official bond in the penal sum of two thousand five hundred dollars, with not less than two sureties, to be approved by the governor of the state, and conditioned for the faithful discharge of the duties of his office. [L. 1890-91, ch. 8, § 18; R. S. 1899, § 856.]

CHAPTER 61.

BOARD OF CONTROL.

§ 761. Board of control. There is hereby constituted a board of control composed of the state engineer and the superintendents of the four water divisions. Said board shall have an office with the state engineer at the capitol, at Cheyenne, and shall hold two meetings each year for the

transaction of such business as may come before it, the first of said meetings to begin on the second Wednesday in April and the second on the third Wednesday in November. The state engineer shall be ex officio president of said board, and shall have a right to vote on all questions coming before it, and a majority of all the members of said board shall constitute a quorum to transact business. [L. 1895, ch. 62, § 4; R. S. 1899, § 857; L. 1907, ch. 86, § 5.]

§ 762. Secretary—Appointment—Salary. The state board of control shall have authority, with power of removal, to appoint a secretary, who shall be a qualified elector of the state, and who shall receive a salary, from the state, of twelve hundred dollars per annum, payable in monthly installments by the state treasurer, upon warrants drawn by the state auditor, and approved by the president of the board of control; and he may be required by the board to furnish such bond as it may deem necessary, for the faithful performance of his duties. The duties of the secretary shall, under the direction of the president of the board, consist in keeping a full, true and complete record of the transactions of the state board of control, and he shall certify, under seal, all certificates of appropriation made according to law. He shall perform such other duties as may be required of him by the board. [L. 1899, ch. 59, § 1; R. S. 1899, § 858; L. 1903, ch. 41, § 2.]

§ 763. Duty at first meeting. It shall be the duty of said board at its first meeting to make proper arrangements for beginning the determination of the priorities of right to the use of the public waters of the state, which determination shall begin on the streams most used for irrigation, and be continued as rapidly as practicable, until all the claims for appropriation now on record shall have been adjudicated. [L. 1890-91, ch. 8, § 20; R. S. 1899, § 859.]

Farm Investment Co. v. Carpenter, 9 Wyo. 129, 61 Pac. 258, 50 L. R. A. 747.

§ 764. Streams to be first adjudicated. The board of control shall decide at their first meeting, the streams to be first adjudicated, and shall fix a time for beginning of taking of testimony, and the making of such examination as will enable them to determine the rights of the various claimants. [L. 1890-91, ch. 8, § 20; R. S. 1899, § 860.]

Farm Investment Co. v. Carpenter, 9 Wyo. 130, 61 Pac. 258, 50 L. R. A. 747.

§ 765. Notice of proceedings. The said board shall prepare a notice, setting forth the date when the engineer will begin a measurement of the stream, and the ditches diverting the water therefrom, and a place, and a day certain, when the superintendent of the water division in which the stream to be adjudicated is situated, shall begin the taking of testimony as to the rights of the parties claiming water therefrom. Said notice shall be published in two issues of a newspaper having general circulation in the county in which such stream is situated, the publication of said notice to be at least thirty days prior to the beginning of taking testimony by said division superintendent, or for the measurement of the stream by the state engineer, or his assistant; and the superintendent taking such testimony shall have the power to adjourn the taking of evidence from time to time, and from place to place; Provided, All places appointed and adjourned to by the superintendent shall be so situated, as related to the streams, as shall best suit the proper convenience of the persons interested in the determination of such priorities and appropriations. [L. 1890-91, ch. 8, § 20; R. S. 1899, § 861.]

§ 766. County to pay expense of printing. All bills for the printing of notices to claimants of water in the adjudications provided for

in this chapter shall be paid for by the county in which the stream, the appropriation of whose waters shall have been so adjudicated, shall be situated, the said bills to be approved by the superintendent of the water division in which the adjudication is made. [L. 1890-91, ch. 8, § 39; R. S. 1899, § 969.]

§ 767. Notice to claimants. It shall also be the duty of said division superintendent to mail to each party having a recorded claim to waters of said stream, by registered mail, a similar notice setting forth the date when the state engineer, or his assistant, will begin the examination of the stream and ditches diverting water therefrom, and also the date when the superintendent will begin the taking of testimony, and the date when the taking of such testimony by said division superintendent shall close. [L. 1890-91, ch. 8, § 20; R. S. 1899, § 862.]

§ 768. Statement of claimant. He shall, in addition, enclose with said notice a blank form on which said claimant shall present in writing all the particulars showing the amounts and dates of appropriations to the use of water of said stream to which he lays claim; the said statement to include the following: The name and postoffice address of the claimant. The nature of the use on which the claim for appropriation is based. The time of the commencement of such use, and if distributing works are required. The date of beginning of survey. The date of beginning of construction. The date when completed. The date of beginning and completion of enlargements. The dimensions of the ditch as originally constructed and as enlarged. The date when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land reclaimed the first year; the amount in subsequent years, with the dates of reclamation, and the amount of land such ditch is capable of irrigating. The character of the soil and the kind of crops cultivated, and such other facts as will show a compliance with the law in acquiring the appropriation and the rank of priority claimed. [L. 1890-91, ch. 8, § 20; R. S. 1899, § 863.]

§ 769. Statements to be under oath. Each of said claimants shall be required to certify to his statements under oath, and the superintendent of the water division in which the testimony is taken, is hereby authorized to administer such oaths, which shall be done without charge to the claimant, as also shall be the furnishing of blank forms for said statement. [L. 1890-91, ch. 8, § 21; R. S. 1899, § 864.]

§ 770. Superintendent takes testimony—When. Upon the date named in the notice provided for in the preceding sections, the division superintendent shall begin the taking of said testimony and shall continue until said testimony shall be completed; Provided, That in case the division superintendent of any water division is directly or indirectly interested in the water of any stream of his division, or is prevented by illness or other disability from the taking of such proofs, the taking of evidence so far as relates to said stream shall be under the direction of the division superintendent of the next nearest water division or under the direct personal supervision of the state engineer, as may be deemed by the engineer the most expedient; Provided, That in the taking of proofs of appropriation of water made under a permit issued by the state engineer, such permits having been issued subsequent to the adjudication of the waters of the stream from which the appropriation is made, the superintendent may, in his discretion, authorize the water commissioner of the district in which the appropriation is made to take such proofs. Upon the taking of the proofs so ordered the water commissioner shall at once forward them to the division superintendent. The

water commissioner shall take no proofs except those specifically ordered by the division superintendent; Provided, further, That upon taking such proof the water commissioner shall be paid for such work out of the contingent allowed the division superintendent in whose district such work is done; Provided, That in the taking of proofs of appropriation of water made under a permit issued by the state engineer, such permits having been issued subsequent to the adjudication of the water of the stream from which the appropriation is made, the superintendent may, in his discretion authorize the water commissioner of the district in which the appropriation is made to take such proofs. Upon the taking of the proofs so ordered the water commissioner shall at once forward them to the division superintendent. The water commissioner shall take no proofs except those specifically ordered by the division superintendent: Provided, further, That upon taking such proof the water commissioner shall be paid for such work out of the contingent allowed the division superintendent, in whose district such work is done. [L. 1890-91, ch. 8, § 22; R. S. 1899, § 865; L. 1901, ch. 87.]

§ 771. Notice upon completion of testimony. Upon the completion of the taking of evidence by the division superintendent, it shall be his duty to at once give notice, in one issue of some newspaper of general circulation in the county where such determination is, and by registered mail to the various claimants, that upon a certain day, and a place named in the notice, all of said evidence shall be open to the inspection of the various claimants, and said superintendent shall keep said evidence open to inspection at said place, not less than one day and not more than five days. [L. 1890-91, ch. 8, § 22; R. S. 1899, § 866.]

§ 772. Contests. Should any person, corporation or association of persons owning any irrigation works, or claiming any interest in the stream or streams involved in the adjudication, desire to contest any of the rights of the persons, corporations or associations who have submitted their evidence to the superintendent as aforesaid, such persons, corporations or associations shall, within fifteen days after the testimony so taken shall have been opened to public inspection, in writing, notify the superintendent of the water division in which is located said irrigation works or stream or streams, stating with reasonable certainty the grounds of their proposed contest, which statement shall be verified by the affidavit of the contestant, his agent or attorney, and the said division superintendent shall notify the said contestant and the person, corporation or association whose rights are contested, to appear before him at such convenient place as the superintendent shall designate in said notice. [L. 1895, ch. 62, § 5; R. S. 1899, § 867.]

§ 773. Hearing. Said superintendent shall also fix the time, both as to the day and hour, for the hearing of said contest, which date shall not be less than thirty nor more than sixty days from the date the notice is served on the party, association or corporation, which notice and the return thereof shall be made in the same manner as summons are served in civil actions in the district courts of this state. Superintendents of water divisions shall have power to adjourn hearings from time to time upon reasonable notice to all the parties interested, and to issue subpoenas and compel the attendance of witnesses to testify upon such hearings, which shall be served in the same manner as subpoenas issued out of the district courts of the state; and shall have the power to compel such witnesses so subpoenaed to testify and give evidence in said matter; and said witnesses shall receive fees as in civil cases, to be paid by the party or parties against whom the contest shall

be finally determined. The evidence on such proceedings shall be confined to the subjects enumerated in the notice of contest. [L. 1895, ch 62, § 5; R. S. 1899, § 868.]

§ 774. Deposit required. The superintendent shall require a deposit of eight dollars from each party for each day he shall be so engaged in taking evidence on said contest. Upon the final determination of the adjudication of the matters by the board of control, an order shall be entered directing that the money so deposited shall be refunded to the persons, associations or corporations in whose favor such contest shall be determined, and that all moneys deposited by other parties therein shall be turned over by the superintendent to the state treasury to the credit of the fund provided for the maintenance of the board of control. [L. 1895, ch. 62, § 5; R. S. 1899, § 869.]

§ 775. Evidence transmitted. Upon the completion of the evidence in the original hearing before the superintendent, and the evidence taken in all contests, it shall be his duty to transmit all the evidence and testimony in said adjudication to the office of the board of control in person, or by registered mail. [L. 1895, ch. 62, § 5; R. S. 1899, § 870.]

§ 776. Measurement of streams and ditches. It shall be the duty of the state engineer, or some qualified assistant, to proceed at the time specified in the notice to the parties on said stream, to be adjudicated, to make an examination of said stream, and the works diverting water therefrom, said examination to include the measurement of the discharge of said stream, and of the carrying capacity of the various ditches and canals diverting water therefrom; an examination of the irrigated lands, and an approximate measurement of the lands irrigated, or susceptible of irrigation from the various ditches and canals, which said observation and measurements shall be reduced to writing, and made a matter of record in his office; and it shall be the duty of the state engineer to make, or cause to be made, a map or plat on a scale of not less than one inch to the mile, showing, with substantial accuracy, the course of said stream, the location of each ditch or canal diverting water therefrom, and the legal subdivisions of lands which have been irrigated, or which are susceptible of irrigation from the ditches and canals already constructed. [L. 1890-91, ch. 8, § 24; R. S. 1899, § 871.]

§ 777. Order determining priorities. At the first regular meeting of the board of control, after the completion of such measurement by the state engineer, and the return of said evidence by said division superintendent, it shall be the duty of the board of control to make, and cause to be entered of record in its office, an order determining and establishing the several priorities of right to the use of waters of said stream, and the amounts of appropriations of the several persons claiming water from such stream, and the character and kind of use for which said appropriation shall be found to have been made. Each appropriation shall be determined in its priority and amount, by the time by which it shall have been made, and the amount of water which shall have been applied for beneficial purposes; Provided, That such appropriator shall at no time be entitled to the use of more water than he can make a beneficial application of on the lands, for the benefit of which the appropriation may have been secured, and the amount of any appropriation made by reason of an enlargement of distributing works, shall be determined in like manner. Provided, That no allotment shall exceed one cubic foot per second for each seventy acres of land for which said appropriation shall be made. [L. 1890-91, ch. 8, § 25; R. S. 1899, § 872.]

Farm Investment Co. v. Carpenter, 9 Wyo. 131, 61 Pac. 258, 50 L. R. A. 747.

§ 778. Secretary to issue certificate. As soon as practicable after the determination of the priorities of appropriation of the use of waters of any stream, it shall be the duty of the secretary to issue to each person, association or corporation represented in such determination a certificate to be signed by the state engineer as president of the board of control, and attested under seal by the secretary of said board, setting forth the name and postoffice address of the appropriator; the priority date and number of such appropriation; the amount of water appropriated; and if such appropriation be for irrigation, a description of the legal subdivisions of land to which said water is to be applied. Such certificate shall be transmitted by said state engineer, or by a member of the board of control, in person or by registered mail, to the county clerk of the county in which such appropriation shall have been made, and it shall be the duty of the county clerk upon receipt of the recording fee, which fee shall be one dollar, to record the same in a book especially prepared and kept for that purpose, and thereupon immediately transmit the same to the respective appropriators. Said recording fee of one dollar shall be paid to the division superintendent at the time of the submission of testimony and proof of appropriation of water by each such claimant or appropriator before the said division superintendent as provided, by law, and shall be by him or the state engineer transmitted with each certificate of appropriation to the county clerk of the county in which said certificate is to be recorded, and his receipt taken therefor, which said receipt shall be filed in the state engineer's office. [L. 1899, ch. 79, § 6; R. S. 1899, § 873; L. 1907, ch. 86, § 11.]

Farm Investment Co. v. Carpenter, 9 Wyo. 131, 61 Pac. 258, 50 L. R. A. 747; Whalon v. Canal Co., 11 Wyo. 343, 71 Pac. 995; Johnston v. Irrigation Co., 13 Wyo. 228, 79 Pac. 22.

§ 779. Appeal from board. Any party or number of parties acting jointly, who may feel themselves aggrieved by the determination of the board of control, may have an appeal from the board of control to the district court of the county in which the stream or streams, involved in such determination, may be situated, provided that in case the said stream or streams shall be situate in, and run through more than one judicial district, or more than one county, then, and in such case, it shall be the duty of the board of control, in making its determination, to designate the district court of the county, to which such appeal may be taken. All persons joining in the appeal shall be joined as appellants and all persons having interests adverse to the parties appealing, or either of them, shall be joined as appellees. [L. 1890-91, ch. 8, § 27; R. S. 1899, § 874; L. 1903, ch. 97.]

Daley v. Anderson, 7 Wyo. 1, 48 Pac. 839.

§ 780. Proceedings on appeal. The party or parties appealing shall, within sixty days of the determination of the board of control, which is appealed from and the entry thereof in the records of the board, file in the district court to which the appeal is taken, a notice in writing stating that such party or parties appeals to such district court from the determination and order of the board of control; and upon the filing of such notice, the appeal shall be deemed to have been taken; Provided, however, That the party or parties appealing shall, within the sixty days mentioned, enter into an undertaking, to be approved by the district court or judge thereof, and to be given to all the parties in the said suit or proceeding, other than the parties appealing, and to be in such an amount as the court, or judge thereof, shall fix, conditioned that the parties giving their said undertaking shall prosecute their appeal to effect, and without unnecessary delay, and will pay all costs and damages, which the party to whom the undertaking is given, or either, or any

of them, may sustain in consequence of such appeal. [L. 1890-91, ch. 8, § 28; R. S. 1899, § 875.]

Daley v. Anderson, 7 Wyo. 4, 5, 48 Pac. 839.

§ 781. Duty of clerk of court when appeal is perfected. The clerk of the district court shall immediately upon filing of said notice of appeal and the approval of the bond mentioned in the preceding section, transmit to the secretary of the board of control, a notice over the seal of the court to the effect that said appeal has been perfected, which notice shall be entered of record by the secretary in the records of the board of control, and the appellant or appellants cause a certified copy thereof to be served on each of the appellees; serving the same in the manner provided for the serving of a summons in the district court. [L. 1895, ch. 62, § 7; R. S. 1899, § 876.]

Daley v. Anderson, 7 Wyo. 4, 5, 48 Pac. 839.

§ 782. Transcript to be filed. The appellant or appellants shall, within six months after the appeal, as provided for, is perfected, file in the office of the clerk of the district court a certified transcript of the order of determination made by the board of control, and which is appealed from, a certified copy of all the records of the board of control relating to such determination, and a certified copy of all the evidence offered before the board of control, including the measurements of streams, tributaries and ditches provided for by § 776, together with the petition setting out the cause of complaint of the party or parties appealing, to which petition all parties joined as appellees shall be served with notice by the issuance of summons out of the office of the clerk of the district court, within the time and in the manner provided by law for the issuance and service of summons in actions of law. [L. 1895, ch. 62, § 8; R. S. 1899, § 877.]

Daley v. Anderson, 7 Wyo. 4, 5, 48 Pac. 839.

§ 783. Practice on appeal. All proceedings of appeal shall be conducted according to the provisions of the civil code of procedure, and the practice of appeals from the district courts of the state to the supreme court; Provided, That the practice on appeal in the district court, as to pleadings necessary to be filed and the admission of evidence upon the trial, shall be the same as is now or may hereafter be provided for by law regulating appeals from the justice court. [L. 1895, ch. 62, § 8 R. S. 1899, § 878.]

§ 784. Clerk shall transmit transcript to clerk of board. It shall be the duty of the clerk of the district court immediately upon the entry of any judgment, order or decree by the district court, or by the judge thereof, in an appeal from the decision of the board of control, to transmit a certified copy of said judgment, order or decree to the secretary of the state board of control. It shall be the duty of the secretary to immediately enter the same upon the records of such office, and the state engineer shall forthwith issue to the superintendent or superintendents of water divisions, instructions in compliance with the said judgment, order or decree, and in execution thereof. [L. 1895, ch. 62, § 8; R. S. 1899, § 879.]

§ 785. Costs. All costs made and accruing by reason of such appeal shall be adjudged to be paid by the party or parties against whom such appeal shall be finally determined. During the time an appeal from the order of the board of control is pending in the district court, and until a certified copy of the judgment, order or decree of the district court is transmitted to the state engineer, the division of water from the stream

involved in such appeal shall be made in accordance with the order of the board of control. [L. 1895, ch. 62, § 8; R. S. 1899, § 880.]

§ 786. Stay bond. Any time after the appeal has been perfected the appellant or appellants may stay the operation of said decree appealed from by filing a bond in the district court wherein such appeal is pending in such amount as the judge thereof may designate, conditioned that he will pay all damages that may accrue to the appellee or appellees by reason of such order or decree not being enforced, should the proceedings and appeal be decided against the appellant. And immediately upon the filing and approving of such bond to stay the operations of the decree, the clerk of the district court shall transmit to the board of control a notice over the seal of the court, to the effect that such bond has been filed, and that the operations of such decree are stayed during the pendency of such appeal proceedings. This notice shall be recorded in the records of the board of control, and the state engineer shall immediately give proper notice to the superintendent of the water division wherein such appeal may have been taken. [L. 1895, ch. 62, § 8; R. S. 1899, § 881.]

§ 787. Appeals to be advanced on docket. Upon any appeal being taken as is by this chapter provided, from the board of control to the district court of this state, it shall be the duty of said court to advance said appeal to the head of its trial docket, and to give such appeal precedence over all civil causes in hearing and determination thereof, and if an appeal be taken from the judgment or the decree of the district court in any appeal in this chapter provided for, to the supreme court of the state, it shall in like manner be the duty of the supreme court to advance such appeal to the head of its docket for the trial of civil causes, and give it like precedence as to trial. [L. 1890-91, ch. 8, § 50; R. S. 1899, § 882.]

§ 788. Rehearing. After any final order of the board of control adjudicating the priorities upon any stream, any party interested therein may within one year thereafter apply for a rehearing for reasons to be stated in the application; and upon the filing of such application, the secretary of the board shall mail written notice thereof to every other party interested, and therein fixing and stating a time when said application will be heard. [L. 1895, ch. 62, § 9; R. S. 1899, § 883.]

§ 789. Authority to modify order and correct testimony. Upon such hearing the board shall have authority to modify or alter the original order in such respect as shall appear just and proper. But it shall not be necessary for an application for rehearing to be filed to entitle any party to an appeal. Upon such hearing the board shall also have authority to permit, upon good cause shown, the correction of the testimony of any party or witness, if it shall appear that a mistake has occurred therein, but no other new evidence shall be received at such hearing unless it shall be shown to the satisfaction of the board that the same is material, and has been discovered since the taking of the original testimony and could not with reasonable diligence have been discovered before that time. [L. 1895, ch. 62, § 9; R. S. 1899, § 884.]

§ 790. Authorized to administer oaths. The members of the board of control shall be authorized to administer oaths in all cases where it shall be necessary in the performance of their official duties. [L. 1895, ch. 62, § 10; R. S. 1899, § 885.]

§ 791. Who to be notified. In issuing notices to claimants in priority adjudications of the waters of any stream and its tributaries, as

provided in this chapter, all parties named in claiming the waters of said stream or tributaries in said transcript shall be notified by mail. [L. 1890-91, ch. 8, § 33; R. S. 1899, § 886.]

§ 792. Secretary to collect fees. The secretary of the board of control shall collect the following fees, which shall be paid in advance, and turned over to the state treasurer, for making certified transcripts of the records of the board of control or of papers or documents filed with said board, one dollar for the first folio and fifteen cents for each additional folio. For attaching certificate and seal of the board to each transcript, one dollar. [L. 1895, ch. 62, § 11; R. S. 1899, § 887; L. 1905, ch. 26.]

§ 793. Final decrees of board—Conclusive. The final orders or decrees of the state board of control, in the proceedings provided by law for the adjudication and determination of rights to the use of the public waters of the state, shall be conclusive as to all prior appropriations, and the rights of all existing claimants upon the stream or other body of water lawfully embraced in the adjudication, subject, however, to the provisions of law for re-hearings in such proceedings and for the re-opening of the orders or decrees therein and for appeals from such orders or decrees. [L. 1901, ch. 67, § 1.]

§ 794. Water right claimants must appear. Whenever the state board of control shall, as provided by law, proceed to adjudicate and determine the rights of the various claimants to the use of water upon any stream or other body of water, it shall be the duty of all claimants interested in such stream or other body of water to appear and submit proof of their respective appropriations, at the time and in the manner required by law; and any such claimant who shall fail to appear in such proceedings and submit proof of his appropriations shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in such proceedings, and shall be held to have forfeited all rights to the use of said stream theretofore claimed by him; Provided, That any person claiming the right to the use of water of any stream heretofore adjudicated by the board of control who, having been or claiming to have been at the time an appropriator therefrom, shall have failed to appear and submit proof of his claim shall be permitted within one year after the passage of this act, but not thereafter, to apply for a hearing and an adjudication of his rights in the manner hereinafter provided; and Provided, further, That any claimant upon whom no other service shall be made than by publication in the newspaper, of the notice of such proceedings and taking of testimony, may, within one year after the entry of the order or decree of the board, determining the rights of the various claimants upon any particular stream or other body of water, have the same opened and be let in to give proof of his appropriation; but before the decree of the board can be opened in such case, the applicant shall give notice to all other persons interested in the water of the stream or other body of water in question, and shall with his petition file the same kind of proof as required of claimants in original hearings and make it appear to the satisfaction of the board that during the pendency of the proceedings he had no actual notice thereof in time to appear and make proof of his claim; and all parties interested may present affidavits as to the matter of actual notice of the applicant. [L. 1901, ch. 67, § 2.]

§ 795. Adjudication—Contests. Whenever the rights to the use of the waters of any stream and all its tributaries within the state have been adjudicated as provided by law, and it shall appear by the records

of such adjudication that it had not been had at one and the same proceeding, then in such case the state board of control shall be and is hereby authorized to give notice of the opening to public inspection of all proofs or evidences of appropriation of water, and the findings of the board in relation thereto from the stream and its tributaries in the manner and according to the provisions of § 771, and any persons, corporations or associations who may desire to contest the claims or rights of other persons, corporations or associations, as set up in the proofs or established by the board, shall proceed in the manner provided for in §§ 773, 774, and 775; Provided, That contests may not be entered into and shall not be maintained except between appropriators who were not parties to the same adjudication proceedings in the original hearings. [L. 1903, ch. 92, § 1.]

§ 796. Evidence in contest—Sent to board of control. Upon the completion of the testimony and evidence taken in contests initiated under the provisions of this chapter, it shall be the duty of the superintendent to transmit all evidence and testimony in said contests to the office of the board of control in person or by registered mail, and the action of said board in relation thereto shall be governed by the provisions of law applicable to contest cases in original adjudication proceedings: Provided, That, if as a result of any such contest it shall be necessary to cancel any final certificate theretofore issued by said board and issue a new certificate in accordance with the findings of the board, such certificate shall be issued without cost to the person entitled to it, other than is incident to a proper recording of such certificate in the office of the county clerk. [L. 1903, ch. 92, § 2.]

§ 797. Copy of judgment sent to board of control. It shall be the duty of the clerks of the several district courts in the state of Wyoming, upon the rendering of judgment by the respective courts in each and every case wherein is involved in any way, any question affecting the title to any water right, irrigating or water system of any kind whatever, to forthwith forward to the state board of control a certified copy of such judgment. [L. 1903, ch. 104.]

§ 798. Copies of records—Evidence. Copies of papers, books, records and maps, on file and deposited by virtue of any law, in the office of the state engineer or state board of control, and certified by the state engineer or secretary of the state board of control, shall be competent evidence in the courts and have the same force and effect as the originals would if produced. [L. 1909, ch. 24.]

CHAPTER 62.

WATER COMMISSIONERS.

§ 799. Districts. The board of control shall divide the state into water districts, said water districts to be so constituted as to secure the best protection to the claimants for water, and the most economical supervision on the part of the state; said water districts shall not be created until a necessity therefor shall arise, but shall be created from time to time as the appropriations and priorities thereof from the streams of the state shall be adjudicated. [L. 1890-91, ch. 8, § 40; R. S. 1899, § 888.]

Ryan v. Tutty, 13 Wyo. 130, 78 Pac. 661.

§ 800. Appointment—Water commissioners. There shall be appointed by the governor, one water commissioner for each water district,

who shall be selected from persons recommended by the superintendent of the water division in which such district is situated. Each commissioner shall hold his office until his successor is appointed and shall have qualified, and the governor shall, by like selection and appointment, fill all vacancies which shall occur in the office of water commissioners, and may at any time remove any water commissioner for failure to perform his duties as such water commissioner. [L. 1890-91, ch. 8, § 41; R. S. 1899, § 889; L. 1907, ch. 86, § 6.]

§ 801. Duty of water commissioners. It shall be the duty of the said water commissioner to divide the water of the natural stream or streams of his district among the several ditches and reservoirs taking water therefrom, according to the prior right of each, respectively, in whole or in part, and to shut and fasten, or cause to be shut and fastened, the head gates of ditches, and shall regulate or cause to be regulated the controlling works of reservoirs, in times of scarcity of water, as may be necessary by reason of the priorities of right existing from said streams of his district. Such water commissioner shall have authority to regulate the distribution of water among the various users under any partnership ditch or reservoir where rights have been adjudicated, in accordance with existing decrees. Whenever, in the pursuance of his duties, the water commissioner regulates a headgate to a ditch or the controlling works of reservoirs, it shall be his duty to attach to such headgate or controlling works a written notice, properly dated and signed, setting forth the fact that such headgate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir. It shall be the duty of the county and prosecuting attorney to appear and defend the division superintendent or any water commissioner who shall be made a defendant in any case which may arise in the pursuance of the official duties of any such officer within the county of such prosecuting attorney. [L. 1890-91, ch. 8, § 42; R. S. 1899, § 890; L. 1907, ch. 86, § 7.]

Ryan v. Tutty, 13 Wyo. 130, 78 Pac. 661.

§ 802. Waste. Said water commissioner shall, as near as may be, divide, regulate and control the use of the water of all streams within his district by such closing or partial closing of the headgates as will prevent the waste of water, or its use in excess of the volume to which the appropriator is lawfully entitled, and any person who may be injured by the action of any water commissioner, or by his failure to act pursuant to this chapter, shall have the right of appeal to the division superintendent and, from his decision, the party aggrieved may appeal to the state engineer. And from the decision of the state engineer in said matter an appeal may be had to the district court of the county wherein the ditch or ditches over which the controversy arises are situated. [R. S. 1887, § 1359; R. S. 1899, § 891; L. 1901, ch. 102, § 1.]

Farm Investment Co. v. Carpenter, 9 Wyo. 125, 61 Pac. 258, 50 L. R. A. 747; Ryan v Tutty, 13 Wyo. 130, 78 Pac. 661.

§ 803. Compensation. Water commissioners herein provided for shall receive compensation at the rate of $5.00 per day for each day he shall be actively employed in the duties of his office; Provided, That where the service may be improved by continuous employment and upon recommendation of the division superintendent, he shall receive pay at the rate of $100.00 per month, in either case to be paid by the county in which the work is performed. Each water commissioner shall keep a true and just account of time spent by him in the duties of each county,

respectively, in which his duties may extend, and shall present a true copy thereof, verified by oath, to the board of county commissioners of the county in which his work may be performed. And the board of county commissioners shall, upon approval thereof by the superintendent of the water division, allow the same. [L. 1890-91, ch. 8, § 43; R. S. 1899, § 892; L. 1907, ch. 86, § 8.]

§ 804. Assistant water commissioner. Said water commissioner shall have power, in cases of emergency, to employ suitable assistants to aid him in the discharge of his duties. Such assistants shall take the same oath as the water commissioner, and shall obey his instructions, and each shall be entitled to such compensation as his services may demand and as the superintendent may recommend, not to exceed in any case four dollars per day for every day he is employed, such payment to be made upon certificates of the division superintendent, in the same manner as provided for the payment of the water commissioner; Provided, That the term of service of such assistant commissioners may be terminated at any time by the division superintendent, and shall in no event continue after the emergency has ceased to exist. [L. 1890-91, ch. 8, § 44; R. S. 1899, § 893; L. 1903, ch. 28; L. 1907, ch. 86, § 9.]

§ 805. Service of water commissioners. When arrangements are not made for the employment of a water commissioner throughout the irrigation season as provided in § 804, the said water commissioner shall begin his work upon written demand being made upon him therefor by one or more appropriators. Such written demand for his services shall be attached to his bill for services and forwarded with it to the county commissioners of the proper county. Where the said commissioner is employed by the month, he shall begin work and terminate his services as the superintendent of his water division may direct. The division superintendent may, under any condition, call upon the water commissioner for work within his district whenever the necessity therefor may in his judgment arise. [L. 1890-91, ch. 8, § 45; R. S. 1899, § 894; L. 1901, ch. 102, § 2; L. 1907, ch. 86, § 10.]

Ryan v. Tutty, 13 Wyo. 131, 78 Pac. 661.

§ 806. Rotation among water users. To bring about a more economical use of the available water supply, it shall be lawful for water-users owning lands to which are attached water rights, to rotate in the use of the supply to which they may be collectively entitled; or a single water-user, having lands to which water rights of a different priority attach, may in like manner rotate in use, when such rotation can be made without injury to lands enjoying an earlier priority. [L. 1909, ch. 108, § 1.]

CHAPTER 63.

IRRIGATION WORKS.

§ 807. Record of interests. Unless the owners of ditches, canals and reservoirs make a record as herein provided, or have a record thereof made in some other manner, showing the relative ownership of each interested party in such irrigation works, said interests shall be established by the ratio between the water right of each water user to the total water rights adjudicated under such irrigation works. The relative interests of joint owners shall, therefore, be fixed by the issuance of the final certificate of appropriation as the same appears of record on February 20th, 1907, or as they shall hereafter be recorded in the

office of the board of control and in the office of the respective county clerks, and no action for the recovery of the title to such irrigation works can be brought after ten years from the date when the final certificates of appropriation have been recorded in the office of said county clerk; Provided, That during such ten years the interested water users as mentioned in the final certificates of appropriation, or their successors, have had continuous, open adverse and undisputed possession of such irrigation works. Every conveyance of a ditch, canal or reservoir, or any interest therein, shall hereafter be executed and acknowledged in the same manner as a conveyance of real estate and recorded as herein provided, and any such conveyance which shall not be made in conformity with the provisions of this chapter, shall be null and void as against subsequent purchasers thereof in good faith and for a valuable consideration. [L. 1907, ch. 86, § 22.]

(Note:—See condemnation proceedings, ch. 262.—Compiler.)

§ 808. **Affidavits.** Any person, persons, partnership or association of individuals, or corporation, may file in the office of the board of control, and in the office of the county clerk of the county wherein any ditch, reservoir or other irrigation works shall be located, an affidavit, duly sworn to before an officer authorized to acknowledge deeds, or before a water superintendent of this state, joined in, signed, and sworn to by all the parties having an interest in such ditch or ditch right, or by the guardian of any such person, if insane or a minor, or in case of a corporation by any two of its officers, stating therein the name of the ditch, the ownership of said ditch, the interest each claimant owns therein specifically, the method of securing rights of way or irrigation works and the date of such procedure and referring to the records of the office of the state engineer or board of control, or both, relative to dimensions of irrigation works, their location, and adjudicated rights to water conveyed in or stored in such works and such other information as may be deemed necessary. [L. 1907, ch. 86, § 23.]

§ 809. **Evidence.** When said affidavit hereinbefore mentioned has been duly executed and filed and recorded as hereinbefore prescribed, the facts therein stated shall be prima facie evidence of the truth thereof in any court of the United States, and no action for the recovery of the title or possession of such irrigation works can be brought after ten years from the time of the recording of such affidavit; Provided, That during such ten years the claimant as mentioned in such affidavit, or his successor, in rights, has been continuous, open and undisputed possession of such irrigation works. [L. 1907, ch. 86, § 24.]

§ 810. **Transfer.** Any transfer made to a purchaser in good faith and for a valuable consideration, of any such irrigation works after the expiration of ten years from the filing of the affidavit as hereinbefore provided, shall rest in the grantee of such transfer an absolute title in fee simple, free from the claims of any person whatsoever, to the extent that such irrigation works are claimed in the said affidavit of such grantor or his predecessor in interest, unless before the expiration of said ten years any other party claiming an interest in such irrigation works has filed in the office of the county clerk of the county wherein his, her, or its land, irrigated by such ditch, may be situated, an affidavit as mentioned in § 808. [L. 1907, ch. 86, § 25.]

§ 811. **Perjury.** Any person who knowingly falsely states his or her ownership in such irrigation works, or the extent thereof, or any guardian who in like manner makes such statement on behalf of his or her ward, or any person who in like manner makes such a statement on

behalf of a corporation, shall be guilty of perjury and upon conviction thereof shall be punished. [L. 1907, ch. 86, § 26.]

§ 812. Actions in equity. Where the ownership of any irrigation works is disputed, or jointly claimed by any person, partnership or corporation, and the several owners cannot agree upon the amount of interest owned by each, and one or more claimants of such right desire the filing of the affidavit as hereinbefore mentioned, while the other or others do not desire to join therein, one or more such claimants may bring an action in equity in the district court of any county wherein the land or parts of the land affected by such ditch or ditch right is located, and said court shall determine the right of the several claimants to such ditch or ditch right, and determine all the facts necessary in the affidavit hereinbefore prescribed, and such decree shall, after being filed and recorded in the office of the county clerk of the proper county as hereinbefore prescribed, have the same force and effect as the affidavit hereinbefore prescribed; Provided, That the provisions of this chapter shall not be construed to relate to water rights, or in any way to conflict with the laws governing the same. [L. 1907, ch. 86, § 27.]

(Note:—Incorporation of ditch companies, see §§ 4009-4013, both inclusive.—Compiler.)

CHAPTER 64.

DITCHES—CARE OF.

§ 813. Ditches to be kept in repair. The owner or owners of any ditch for irrigation, or other purposes, shall carefully maintain the embankments thereof, so that the waters of such ditch may not flood or damage the premises of others. [R. S. 1887, § 1323; R. S. 1899, § 901.]

Big Goose & Beaver Ditch Co. v. Morrow, 8 Wyo. 537, 59 Pac. 159; Howell v. Big Horn Basin Col. Co., 14 Wyo. 34, 81 Pac. 785, 1 L. R. A. (N. S.) 596.

§ 814. Vested rights preserved. Nothing in this chapter contained, shall be so construed as to impair the prior vested rights of any mill or ditch owner, or other person, to the use of any such water course. [R. S. 1887, § 1324; R. S. 1899, § 902.]

§ 815. When commissioners to bridge ditches—Expenses. When any such ditch or water-course shall be constructed across any public traveled road, and not bridged within three days thereafter, it shall be the duty of the county commissioners of the county in which said ditch and road are located, to put a bridge over said ditch or water-course, and call upon the owner or owners of said ditch or water-course to pay the expenses of constructing said bridge, and if payment thereof be refused, a civil action may be maintained for the recovery of the same, together with all accruing costs. [R. S. 1887, § 1326; R. S. 1899, § 903.]

§ 816. Ditch owners to protect fish. It shall be the duty of every person, corporation or company, who shall construct, maintain or operate any ditch or canal pursuant to the laws of this state, to construct and maintain, at the point and place where the water is diverted from its natural channel, some fit and proper obstruction whereby all fish will be prevented from entering said ditch or canal. Any person, company or corporation violating the provisions of this section shall be adjudged guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not less than ten nor more than sixty days, or by both such fine and imprisonment. [R. S. 1887, § 1360; R. S. 1899, § 970.]

Farm Investment Co. v. Carpenter, 9 Wyo. 125, 61 Pac. 258, 50 L. R. A. 747

§ 817. Interference with headgate—Penalty. Any person who shall willfully open, close, change, or interfere with any headgate or water-box without authority, or who shall willfully use water or conduct water into or through his ditch which has been lawfully denied him by the water commissioner or other competent authority, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in a sum not exceeding one hundred dollars or imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment, (and the possession or use of water when the same shall have been lawfully denied by the water commissioner or other competent authority shall be prima facie evidence of the guilt of the person using it.) [L. 1890-91, ch. 8, § 42; R. S. 1899, § 971; L. 1901, ch. 86.]

Ryan v. Tutty, 13 Wyo. 131, 78 Pac. 661.

§ 818. Power to arrest. The water commissioners or their assistants, within their districts shall have power to arrest any person or persons offending, and turn them over to the sheriff of the proper county, and immediately upon delivering any such person so arrested into the custody of the sheriff, it shall be the duty of the water commissioner making such arrest, to immediately in writing and upon oath, make complaint before the proper justice of the peace against the person so arrested. [L. 1890-91, ch. 8, § 42; R. S. 1899, § 972.]

§ 819. Destroying water improvements—Penalty. Any person or persons who shall knowingly and willfully cut, dig or break down, or open any gate, bank, embankment or side of any ditch, canal or reservoir, flume, tunnel or feeder in which such person or persons may be joint owners, or on the property of another, or in the lawful possession of another or others, and used for the purpose of irrigation, milling, manufacturing, mining or domestic purposes, with intent maliciously to injure any person, association or corporation, or for his or her own gain, unlawfully, with the intention of stealing, taking or causing to run or pour out of such canal or reservoir, feeder or flume, any water for his or her own profit, benefit or advantage, to the injury of any other person, persons, association or corporation lawfully in the use of such water, or of such ditch, canal, tunnel, feeder or flume, he, she, it or they, so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars, and may be imprisoned in the county jail not exceeding six months, or both, in the discretion of the court. [R. S. 1887, § 1347; R. S. 1899, § 973.]

§ 820. Capital stock of ditch companies—Assessable. Any ditch or irrigation company or association, all the property or capital stock of which is owned by farmers or others, owning lands under the line of such company's or association's ditch, and receiving water therefrom, by reason of their being owners or stockholders in said company or association, shall have the right to levy and collect such annual assessments on the capital stock of said company, or members or owners of such association, whether said capital stock be fully paid up or otherwise, as may be deemed necessary by the trustees of said company, or a majority of the stock of such association, for the purpose of maintaining its ditches, flumes, tunnels, and the payment of all necessary expenses of such company; Provided, That this section shall only apply to such water companies or associations whose capital stock or ditch property is wholly owned by persons or corporations owning land under the line of their ditches, and using water therefrom by reason of being such stockholders in said companies; and Provided further, That said com-

pany or association shall have the right to close the headgate and refuse water to all such stockholders, owners or members who fail or refuse to pay said assessments after ten days' notice thereof, in writing, made by the president, agent or attorney of said company or association. [L. 1893, ch. 23; R. S. 1899, § 976.]

§ 821. Vested rights preserved. This chapter shall in no wise be construed as impairing or abridging any rights already vested in any person or persons, company or corporation by virtue of the law heretofore in force. [R. S. 1887, § 1361; R. S. 1899, § 977.]

Farm Investment Co. v. Carpenter, 9 Wyo. 125, 61 Pac. 258, 50 L. R. A. 747.

CHAPTER 65.

PARTNERSHIP DITCHES.

§ 822. Maintenance of ditch. In all cases where irrigating ditches are owned by two or more persons and one or more of such persons shall fail or neglect to do his, her or their proportionate share of the work necessary for the proper maintenance and operation of such ditch or ditches or to construct suitable head-gates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such work as is reasonably necessary to maintain the ditch, may, after having given ten days' written notice to such owner or owners who have failed to perform his, her or their proportionate share of such work, necessary for the operation and maintenance of said ditch or ditches, perform his, her or their share of such work, and recover therefor from such person or persons so failing to perform his, her or their share of such work in any competent court having jurisdiction of the matter, the expense or value of such work or labor so performed. [L. 1897, ch. 72, § 1; R. S. 1899, § 915; L. 1903, ch. 93, § 2.]

Mau v. Stoner, 14 Wyo 192, 198, 83 Pac. 218; 15 Wyo. 124, 87 Pac. 434, 89 Pac. 466.

§ 823. Lien for work performed on ditch. Upon the failure of any co-owner to pay his proportionate share of such expense as mentioned in the preceding section, within thirty days after receiving a statement of the same as performed by his co-owner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county clerk of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons who shall fail to perform their proportionate share of the work requisite to the proper maintenance of said ditch, which said lien when so taken may be enforced in the same manner as provided by law for the enforcement of mechanics' and builders' liens. [L. 1897, ch. 72, § 2; R. S. 1899, § 916.]

Mau v. Stoner, 12 Wyo. 487, 76 Pac. 584.

§ 824. Disagreements referred to water commissioner. When two or more persons, joint owners in an irrigation ditch or reservoir, not incorporated, or their lessees, are unable to agree relative to the division or distribution of water received through their ditch or from their reservoir, it shall be lawful for any such owner or owners, his or their lessee or lessees, or either of them, to apply to the water commissioner of the district in which such ditch or reservoir shall be located, by a written notice setting forth such fact, asking the water commissioner to take

charge of such ditch or reservoir for the purpose of making a just division or distribution of the water from the same, to the parties entitled to the use thereof. The said water commissioner shall take exclusive charge of such ditch or reservoir for the purpose of dividing the water therefrom in accordance with rights established by existing decrees, and continuing the said work until the necessity therefor shall cease to exist. In all cases where the water commissioner or a deputy water commissioner is called upon to divide the waters of a ditch or reservoir between appropriators, when the term of his employment exceeds three consecutive days he shall be paid in full for his service by the interested water users in proportion to the established rights of each. Any payments not made for the service of such water commissioner after a written demand has been made therefor, the same shall be a lien upon any land or other property owned by an interested water user refusing to pay and may be recovered by the water commissioner in any court of competent jurisdiction. [L. 1907, ch. 86, § 20.]

CHAPTER 66.

DAMS.

§ 825. Dams—Plans of. Duplicate plans for any dam across the channel of a running stream, above five feet in height, or of any other dam intended to retain water above ten feet in height, shall be submitted to the state engineer for his approval, and it shall be unlawful to construct such dam until the said plans have been approved. [L. 1895, ch. 45, § 3; R. S. 1899, § 931.]

§ 826. Engineer's authority to inspect. The state engineer shall have authority to examine and inspect, during construction, any dam authorized under the provisions of this chapter, or any ditch, canal or other work carrying over fifty cubic feet of water per second of time, and at the time of such inspection he may order the parties constructing such dam or other works to make any addition or alteration which he considers necessary for the security of the work or the safety of any person or persons residing on or owning land in the vicinity of such works. [L. 1895, ch. 45, § 3; R. S. 1899, § 932.]

Howell v. Big Horn Basin Col. Co., 14 Wyo. 35, 81 Pac. 785, 1 L. R. A. (N. S.) 596.

§ 827. Inspection—When desired. Should any person or persons residing on or owning land in the neighborhood of any irrigation works after completion, or in course of completion, apply to the state engineer in writing desiring an inspection of such works, the state engineer may order an inspection thereof. Before doing so he may require the applicant for such inspection to make a deposit of a sum of money sufficient to pay the expenses of an inspection, and in case the application appears to him not to have been justified, he may cause the whole or part of such expense to be paid out of such deposit. In case the application appears to the state engineer to have been justified, he may require the company to pay the whole or any part of the expenses of the inspection, and the same may be collected in the same manner as is provided for the collection of the expenses of constructing headgates and measuring flumes. [L. 1895, ch. 45, § 3; R. S. 1899, § 933.]

Howell v. Big Horn Basin Col. Co., 14 Wyo. 35, 81 Pac. 785, 1 L. R. A. (N. S.) 596

SEC. 830. QUALIFIED ELECTOR—DEFINED. For the purpose of this act the words, "qualified elector or electors", shall be understood to be a citizen of the United States, or who may have declared his or her intention to become such, and that any person so qualified shall have power to do and perform any and all things requisite and necessary for the purpose of this act, the same as if he or she was a bona fide resident of the district. It shall be lawful for any such elector desiring to vote at any election held for determining the question whether an irrigation district shall be organized under the conditions of this act, and for the election of the first board of directors of such districts, or at any election upon the question of issuing bonds by said district, or the approval or rejection of any contract in excess of twenty-five thousand ($25,000.00) dollars, who shall reside without the State of Wyoming, or more than ten miles distant from the exterior boundaries of such proposed district, to vote at such election without being personally present within said proposed district on the day of such election, in the manner and under the regulations hereinafter prescribed:

The person so entitled to vote shall make and subscribe before any clerk of a court of record, or any officer authorized to administer oaths, and having a seal, an affidavit in substance, as follows:

I, ..., do solemnly swear that I am an owner of the following described land, within the State of Wyoming, to-wit: .....
and a freeholder within the ..... irrigation district, as proposed, and that I have paid a property tax in the said proposed district during the year next preceding such election; that I reside without the State of Wyoming, or more than ten miles distant from the exterior boundary of the proposed ..... irrigation district, that I am a citizen of the United States, or have declared my intention to become such, and that I have not voted and will not vote in person at the election called and to be held on the ..... day of .....
A. D. 19..., on the question of the organization of said proposed district, and the election of its first board of directors (or upon the question of issuing bonds of such district, or the approval or rejection of any contract in excess of twenty-five thousand ($25,000.00) dollars), and that I desire to vote at such election, and that this affidavit shall be taken and filed as my ballot at said election; that upon the question of the organization of said district, I cast my ballot ..... the organization thereof, by the words, "Irrigation District .....", and for members of the first board of directors of said district, I cast my ballot for ..... as director in division No. 1, for ..... as director in division No. 2, for .....
..... as director in division No. 3, for .....
as director in division No. 4 and for ..... as director in division No. 5.

Subscribed and sworn to before me this ..... day of
..... A. D. 19...., by .....
who is to me personally known to be the person named in and who signed the foregoing affidavit.

Witness my hand and official seal this ..... day of
....., A. D. 19....

.....
Official Title.

If at such election the question of the issuance of bonds by said district, or approving or rejecting any contract, is to be voted upon the foregoing affidavit shall be modified or added to so as to also express the wish of the voter for or against such issuance of bonds, or approval or rejection of any contract.

The person so voting shall forthwith transmit to, or deposit such affidavit with the clerk of the Board of County Commissioners ordering such election, if the election is for the organization of a district, prior to the day fixed by law for the canvass of the votes cast at said election, and if the said election be upon the question of the issuance of bonds, or approval or rejection of any contract forthwith transmit to, or deposit with the Secretary of the said district, said affidavit prior to the day fixed for the canvass of such votes cast at such election, such affidavit to be placed in an envelope, securely sealed and marked "The Ballot of ..... an absent voter of precinct No. ....., in the ..... irrigation district, ... County, State of Wyoming," and shall remain unopened until the day of the canvass, at which time at two (2) o'clock in the afternoon of the first day of the meeting of said canvassing board, any two electors, residents of the said irrigation district, may appear before said canvassing board and in writing challenge such voter's right to vote at such election, whereupon such elector shall establish his right to so vote, to the satisfaction of said canvassing board in accordance with law, and shall be allowed reasonable time and opportunity to do so. Should no such challenge appear during the first day of the meeting of such board, they shall not be permitted to so appear thereafter, should the contention of such challenger be by said board sustained, then said sealed envelope shall be returned to such elector and the said canvassing board, in the presence of the said clerk or secretary, as the case may be, and no other person, shall open all envelopes not so challenged and record said ballot upon the poll sheet of the proper precinct in the same manner as clerks of election record votes, and such votes shall be counted, canvassed and certified the same as though such ballot had been cast by the voter in person.

CHAPTER 67.

FLOATING LOGS, ETC., UPON STREAMS.

§ 828. Permit. Any person, association or corporation desiring or intending to drive or float logs, timber or lumber down or upon any stream in this state shall, before commencing operation apply to the state engineer for a permit to drive or float the same. Such application shall be in writing and shall state that the driving of such logs, timber or lumber will be conducted with all possible expedition and in such manner as not to interfere with, or injure any irrigating ditch or other property along the stream on which said drive is to take place, and the applicant shall be required by the state engineer to give bond to the state of Wyoming in such sum as the state engineer may deem sufficient, conditioned for the conducting of said drive without delay and for the protection of the owners of irrigating ditches and property along the stream whereon said drive is to be made. When said permit is issued the said applicant may proceed to conduct said drive upon the stream or streams therein mentioned; Provided, however, That no permit shall be granted allowing any logs, timber or lumber to be left in or upon any stream so as to be frozen in during winter, and it shall be the duty of the state engineer to issue to all applicants a license to float timber or lumber on all streams of suffiicent capacity, upon compliance with the provisions aforesaid. Any one violating any of the provisions of this section shall, on conviction, be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding three months, or by both such fine and imprisonment. [L. 1901, ch. 89; L. 1903, ch. 16, §§ 1, 2.]

CHAPTER 68.

IRRIGATION DISTRICTS.

§ 829. Organization. Whenever a majority of the freeholders owning lands in any district desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the provisions of this chapter, and when so organized each district shall have the powers conferred or that may hereinafter be conferred by law upon such irrigation district; Provided, That where ditches, canals or reservoirs have been constructed or are in course of construction, or the construction thereof has been contracted for before February 19th, 1907, such ditches, canals, reservoirs and franchises, and the lands watered thereby, shall be exempt from the operation of this law, except such district shall be formed to purchase, acquire, lease or rent such ditches, canals, reservoirs and their franchises, by and with the consent of the owners thereof. [L. 1907, ch. 72, § 1.]

§ 830. Qualified elector—Defined. For the purpose of this chapter the words "qualified elector or electors" shall be understood to be a citizen of the United States, or who may have declared his or her intention to become such, and that any person so qualified shall have power to do and perform any and all things requisite, and necessary for the purpose of this chapter, the same as if he or she was a bona fide resident of the district. [L. 1907, ch. 72, § 2.]

§ 831. Petition. For the purpose of establishment of an irrigation district as provided by this chapter, a petition shall be filed with the board of county commissioners of the county which embraces the largest acreage of the proposed district; said petition shall state that it is the

purpose of petitioners to organize an irrigation district, under the provisions of this chapter; said petition shall also contain a general description of the boundaries of such proposed district, the means proposed to supply water for the irrigation of the lands embraced therein, the name proposed for such district, and shall select a committee of three of said petitioners to present such petition to the board of county commissioners as provided by law, praying that the said board define and establish the boundaries of said proposed district and submit the question of the final organization of the same to the vote of the freeholders who are also qualified electors within said proposed district; said petition shall be signed by a majority of the freeholders within said proposed district, and who shall be the owners in the aggregate of a majority of the whole number of acres belonging to the freeholders within said proposed district. The petition must be accompanied by a map or plat in duplicate, showing accurately the lands proposed to be embraced within such proposed district, together with the location and extent of the proposed system of irrigation. Said maps and plats must be drawn on tracing linen, on a scale not less than two inches to the mile; they must show the location of the headgate or point of diversion by courses and distances from some government corner; they must show the actual location of the reservoirs, ditches or canals and the water-line of reservoirs, and must show, whenever section lines are crossed, the distances to the nearest government corner. The map or plat must show the course of the river, stream or other source of supply, the location and area of all lands proposed to be irrigated, the position and area of all reservoirs or basins intended to be created for the purpose of storing water; the location of the intersection with all other ditches, canals, laterals or reservoirs which are caused by this work, or with which connections are made; but all streams and all intersecting ditches, canals and reservoirs not connected with the proposed work must be represented in ink of a different color from that used to represent the proposed new work and any old work of the district. The maps and plats must contain the name of the proposed work, and when possible the number of any water right permit to be embraced in such proposed system, and must be certified by the surveyor who made the survey with the date thereof, and his address. Said maps and plats must have first been submitted to the state engineer for his examination and must be accompanied by his report as to the feasibility, practicability and probable cost of the proposed irrigation system. The said petition shall also be accompanied by a good and sufficient bond, to be approved by said board of county commissioners in double the amount of the probable cost of organizing the district, conditioned for the payment of all costs incurred in said proceedings in case said organization shall not be effected, but in case such district is so effected, then said expenses incurred by the board of county commissioners shall be paid back to said county by said district. Such petition shall be published for at least four weeks before the time at which the same is to be presented, in some newspaper of general circulation printed and published nearest the land embraced in the proposed district and in the county where said petition is to be presented, together with a notice signed by the committee of said petitioners selected by the petition for that purpose, giving the time and place of the presentation of the same to said board of county commissioners; and if any portion of such proposed district lie within another county or counties, then said petition and notice shall be published in a newspaper published in such county or counties; and a marked copy of said publication and also a registered notice of the proposal to organize such district shall be at once mailed to the last

known postoffice address of each and every person owning lands within the boundaries of such proposed district. The presentation of said petition shall only be made at a regular meeting of said board of county commissioners. [L. 1907, ch. 72, § 3.]

§ 832. Commissioners define boundaries. When such petition is presented, and it shall appear that the notice of the presentation of said petition has been given as required by law, and that said petition has been signed by the requisite number of petitioners as required by this chapter, the commissioners shall then proceed to define the boundaries of said proposed district from said petition and from such applications for the exclusion of lands therefrom and inclusion of lands therein as may be made in accordance with the intent of this chapter; they may adjourn such examination from time to time not exceeding three weeks in all and shall, by final order duly entered, define and establish boundaries of such proposed district; Provided, That said board shall not modify such proposed boundaries described in the petition so as to change the object of said petition or so as to exempt from the operation of this chapter any land within the boundaries proposed by the petition susceptible to irrigation by the same system of water works applicable to other lands in such proposed district; nor shall any land be included in such district if the owner thereof shall make application at such hearing to withdraw the same; Provided, also, That contiguous lands not included in such proposed district as described in the petition may upon application of the owner or owners be included in such district upon such hearing; Provided, That in the hearing of any such petition the board of county commissioners shall disregard any informality therein, and in case they deny the same or dismiss it for any reasons on account of the provisions of this chapter not having been complied with, which are the only reasons upon which they shall have a right to refuse or dismiss the same, they shall state their reasons in writing therefor in detail, which shall be entered upon their records and in case these reasons are not well founded a writ of mandamus shall, upon proper application therefor, issue out of the district court of said county, compelling them to act in compliance with this chapter, which writ shall be heard within twenty days from the date of issuance, and which twenty days shall be excluded from the forty days given the commissioners herein to act upon such petition. When the boundaries of any proposed district shall have been examined and defined as aforesaid, the county commissioners shall forthwith make an order allowing the prayer of said petition, defining and establishing the boundaries and designating the name of such proposed district, and also divide such district into three or five divisions, as nearly equal in size as may be practicable; and one director, who shall be a freeholder and qualified elector in the division, shall be elected as a director, from such division, by the freeholders who are also qualified electors in the proposed district at large. No more than one person shall be elected as a director from one and the same division of such district. Thereupon the said commissioners shall by further order duly entered upon their record call an election of the freeholders who are also qualified electors of said district, to be held for the purpose of determining whether such district shall be organized under the conditions of this chapter, and by such order shall submit the names of one or more persons from each of the three divisions of said district as herein provided to be voted for as directors therein. Each of said divisions shall constitute an election district for the purposes of this chapter. Said board of county commissioners shall then give notice of such election to be held in such proposed district, which notice shall be published for three weeks

prior to such election in a newspaper within the county or counties within which such proposed district lies. Such notice shall require the said electors to cast ballots which shall contain the words "Irrigation District—Yes" or "Irrigation District—No," or words equivalent thereto, and also the names of persons to be voted for to fill the various elective offices by this chapter provided for. For the purposes of this election above provided for, the said board of county commissioners must establish a convenient number of election precincts and polling places in said proposed district and define the boundaries thereof, which said precincts may thereafter be changed by the board of directors of such district, and shall also appoint the judges of election for such precinct, one of whom shall act as clerk of election. The officers of such district shall consist of three or five directors, as aforesaid, a secretary, who shall be appointed by the board of directors, and the county treasurer of the county in which is located the office of such district shall be ex officio treasurer of such district. At said election and all elections held under the provisions of this chapter, all persons who are both freeholders and also qualified electors within such proposed district and who have paid a property tax in said proposed district during the year next preceding such election shall be entitled to vote, and none others. [L. 1907, ch. 72, § 4.]

§ 833. **Election.** Except as in this chapter otherwise provided, all such elections shall be conducted as nearly as practicable in accordance with the general election laws of this state. The said board of county commissioners shall meet on the second Monday next succeeding such election and proceed to canvass the votes cast thereat; and if, upon such canvass, it appears that at least a majority of said legal electors in said district have voted "Irrigation District—Yes," the said board shall, by an order entered on their minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices, to be duly elected to such office. Said board shall cause a copy of such order, including a plat of said district, duly certified by the clerk of the board of county commissioners, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated, and no board of county commissioners of any county, including any portion of such district, shall, after the date of organization of such district, allow another district to be formed, including any of the lands of such district, without the consent of the board of directors thereof; and from and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall immediately enter upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold such offices, respectively, until their successors are elected and qualified. [L. 1907, ch. 72, § 5.]

§ 834. **Election—When held.** The regular election of said district shall be held on the first Tuesday after the first Monday in December in each second calendar year thereafter, at which said officers shall be elected. The person receiving the highest number of votes for any offices to be filled at such election is elected thereto. Within ten days after receiving their certificates of election, hereinafter provided for, said officers shall take and subscribe the official oath and file the same in the office of the county clerk of the county where the organization was effected, and thereupon immediately assume the duties of their respective offices. Each member of said board of directors shall execute an official bond in the sum of three thousand dollars ($3,000), which bond

shall be approved by the judge of the district court of said county where such organization was effected, and shall be recorded in the office of the county clerk thereof. All official bonds herein provided for shall be in form prescribed by law for official bonds for county officers, except that the obligee named in said bond shall be to said district.]L. 1907, ch. 72, § 6.]

§ 835. Directors. The office of the board of directors shall be located in the county where the organization was effected. Fifteen days before any election held under this chapter, subsequent to the organization of the district, the secretary who shall be appointed by the board of directors, shall cause notice specifying the polling places of each precinct to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board in said county. Prior to the time for posting the notice, the board must appoint from each precinct, from the electors thereof, three judges, one of whom shall act as clerk, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or the members appointed do not attend the opening of polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the hour and the place in the precinct where the election must be held. [L. 1907, ch. 72, § 7.]

§ 836. Judges of election—Duties. One of the judges shall be chairman of the election board and may: First, administer all oaths required in the progress of an election; second, appoint judges and clerks, if during the progress of the election any judge or clerk ceases to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progess of an election. Before opening the polls, each member of the board must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at eight o'clock in the morning of election and be kept open until six o'clock p. m. of the same day. It shall be the duty of the clerk of the board of election to forthwith deliver the returns duly certified to the board of directors of the district. [L. 1907, ch. 72, § 8.]

§ 837. Directors' meeting. No lists, tally paper or certificates returned from any election shall be set aside or rejected for want of form if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after election and canvass the returns. If at the time of meeting, the returns from each precinct in the district in which the polls were open have been received, the board of directors must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and counting the votes of the district for each person voted for, and declaring the results thereof. The board shall declare elected the person receiving the highest number of votes so returned for each office, and also declare the result of any question submitted. [L. 1907, ch. 72, § 9.]

§ 838. **Secretary.** The secretary of the board of directors must, as soon as the result of any election held under the provisions of this chapter is declared, enter in the records of such board and file with the county clerk of the county in which the office of said district is located, a statement of such results, which statement must show: First, a copy of the publication notice of said election; second, the names of the judges of said election; third, the whole number of votes cast in the district and in each precinct of the district; fourth, the names of the persons voted for; fifth, the office to fill which each person was voted for; sixth, the number of votes given in each precinct for each of such persons; seventh, the number of votes given in the district for each of such persons; eighth, the names of the persons declared elected; ninth, the result declared on any question submitted in accordance with the majority of the votes cast for or against such question. The board of directors must declare elected the person having the highest number of votes given for each office, and also the result of any question submitted. The secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of a vacancy in the board of directors, by death, removal, or inability from any cause, to properly discharge the duties as such director, the vacancy shall be filled by appointment by the remaining members of the board, and upon their failure or inability to act within thirty days after such vacancy occurs, then upon petition of five electors of said district the board of county commissioners of the county where the office of said board of directors is situate, shall fill such vacancy or vacancies. Any director appointed as above provided shall hold his office until the next general election of said district, and until his successor is elected and qualified. [L. 1907, ch. 72, § 10.]

§ 839. **Organization of board.** The directors having been duly qualified, shall organize as a board, elect a president from their number, and appoint a secretary. The board shall have power, and it shall be their duty, to adopt a seal, manage and conduct the affairs and business of the district, make and execute all necessary contracts, employ such agents, attorneys, officers and employes as may be required, and prescribe their duties, establish equitable rules and regulations for the distribution and use of water among the owners of said land; Provided, always, That such rules shall not be in conflict with or contrary to any statute of this state relative to such matters; and generally to perform all such acts as shall be necessary to fully carry out the purposes of this chapter. Said board shall have the power in addition to the means to supply water to said district proposed by the petition submitted for the formation of said district, to construct, acquire or purchase any and all canals, ditches, reservoirs, reservoir sites, water rights, rights of way, or other property necessary for the use of the district. But nothing in this chapter shall be so construed as to allow any district to buy or lease land except for the necessary rights of way for ditches, flumes, reservoirs and other works necessary for the distribution of water. In case of the purchase of any property by such district, the bonds of the district hereinafter provided for may be used at their par value in payment without previous offer of such bonds for sale. But no contract involving a consideration exceeding ten thousand dollars ($10,000), and not exceeding twenty-five thousand dollars ($25,000) shall be binding, unless such contract shall be authorized and ratified in writing by not less than one-third of the legal electors of said district according to the number of votes cast at the last district election; nor shall any contract in excess of twenty-five thousand dollars ($25,000) be binding until such con-

tract shall have been authorized and ratified at an election, in manner as is provided for the issue of bonds. The said rules and regulations shall be printed in convenient form as soon as the same are adopted, for distribution in the district. All waters distributed shall be apportioned to each land owner pro rata to the lands assessed under this chapter within such district. The board of directors shall have power to lease or rent the use of water on contract for the delivery thereof to occupants of other land within or without the said district at such prices and on such terms as they deem best; Provided, The rental shall not be less than one and one-half times the amount of the district tax for which said land would be liable if held as a freehold; and Provided, further, No vested or prescriptive right to the use of such water shall attach to said land by virtue of such lease or such rental; Provided, That any land owner in said district may, with the consent of the board of directors, assign the right to the whole or any portion of the water so apportioned to him for any one year where practicable to any other bona fide land owner, to be used in said district for use on his land for said year; Provided, Such owner shall have paid all amounts due on assessments upon all such lands. [L. 1907, ch. 72, § 11.]

§ 840. Quarterly meeting. The board of directors shall hold a regular quarterly meeting in their office on the first Tuesday in January, April, July and October, and such special meetings as may be required for the proper transaction of business. All special meetings shall be called by the president of the board, or any two directors. All meetings of the board must be public; and two members shall constitute a quorum for the transaction of business in districts of three directors, and three shall constitute a quorum in districts of five directors; and on all questions requiring a vote there shall be a concurrence of a majority of the directors present. All records of the board must be open to the inspection of any elector during business hours. The board, its agents and employes, shall have the right to enter upon any land in the district to make surveys and to locate and construct any canal or canals, and the necessary laterals. Said board shall also have the right to acquire all lands, water rights, franchises and other property necessary for the construction, use, maintenance, repair, and improvement of its canals, ditches, reservoirs and water works; and shall also have the right by purchase or condemnation to acquire rights of way for the construction or enlargement of any of its ditches, canals or reservoirs, also lands for reservoir sites. [L. 1907, ch. 72, § 12.]

§ 841. Title to property held in trust. The title to all property acquired under the provisions of this chapter shall immediately and by operations of law vest in such irrigation district, in the corporate name, and shall be held by such district in trust for, and is hereby dedicated and set apart for the uses and purposes set forth in this chapter, and said board is hereby authorized and empowered to hold, use and acquire, manage, occupy and possess said property, as herein provided; Provided, That when any district contemplated in this chapter shall find it necessary to procure and acquire a supply of water from outside the boundaries of this state, then and in such event it shall be lawful for said district to contract and pay for the same in the same manner as other property acquired by the district is purchased and paid for. [L. 1907, ch. 72, § 13.]

§ 842. Powers of board. The said board is hereby authorized and empowered to take conveyance or assurance for all property acquired by it under the provisions of this chapter in the name of such irrigation

district to and for the purposes herein expressed and to institute and maintain any and all actions and proceedings, suits at law, or in equity, necessary or proper in order to fully carry out the provisions of this chapter or to enforce, maintain, protect, or preserve any or all rights, privileges and immunities created by this chapter or acquired in pursuance thereof. And in all courts, actions, suits, or proceedings, the said board may sue, appear and defend in person or by attorneys and in the name of such irrigation district. Judicial notice shall be taken in all actions, suits and judicial proceedings in any court of this state of the organization and existence of any irrigation district of this state, now or hereafter organized, from and after the filing for record in the office of the county clerk of the certified copy of the order of the board of county commissioners mentioned in § 832; and a certified copy of said order shall be prima facie evidence in all actions, suits and proceedings in any court of this state of the regularity and legal sufficiency of all acts, matters and proceedings therein recited and set forth; and any such irrigation district, in regard to which any such order has been heretofore or may hereafter be entered, and such certified copy thereof, so filed for record, and which has exercised or shall exercise the rights and powers of such a district, and shall have had or shall have in office a board of directors exercising the duties of their office, and the legality or regularity of the formation or organization whereof shall not have been questioned by proceedings in quo warranto instituted in the district court of any county in which such district or the greater portion thereof is situated within one year from the date of such filing, shall be conclusively deemed to be a legally and regularly organized, established and existing irrigation district within the meaning of this chapter; and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding whether brought under the provisions of this chapter or otherwise. [L. 1907, ch. 72, § 14.]

§ 843. **Bond issue.** For the purpose of constructing or purchasing or acquiring necessary reservoir sites, reservoirs, water rights, canals, ditches and works, and acquiring the necessary property and rights therefor, for the purpose of paying the first year's interest upon the bonds therein authorized, and otherwise carrying out the provisions of this chapter, the board of directors of any such district shall, as soon after such district has been organized as may be practicable, and after first having submitted detailed plans of any proposed reservoir, flume, ditch, canal, or works for the storage, conduit and distribution of water for the purposes as by this chapter contemplated, to the state engineer and obtained his written approval thereof, and not before, and after and not until then, having obtained a water right permit from the state engineer for such proposed irrigation system; and also whenever thereafter the construction fund has been exhausted by expenditures herein authorized therefrom, and the board deems it necessary or expedient to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised for such purposes, and shall forthwith call a special election, at which election shall be submitted to the electors of such district possessing the qualifications prescribed by this chapter the question of whether or not the bonds of said district shall be issued in the amount so determined. A notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept once a week for at least three successive weeks. Such notice shall pre-

scribe the time of holding the election, the amount of bonds proposed to be issued, and said election must be held and the result thereof determined and declared in all respects as nearly as possible in conformity with the provisions of this chapter governing the election of officers; Provided, That no informality in conducting such election shall invalidate the same if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds—Yes" or "Bonds—No", or words equivalent thereto. If a majority of the legal electors who are freeholders and taxpayers within said district have voted "Bonds—Yes" the board of directors shall immediately cause bonds in such amount to be issued and payable in series as follows, to-wit: At the expiration of eleven years, not less than five per cent of the whole amount and number of said bonds; at the expiration of twelve years, not less than six per cent of the whole amount and number of said bonds, at the expiration of thirteen years, not less than seven per cent of the whole amount and number of said bonds; at the expiration of fourteen years, not less than eight per cent of the whole amount and number of said bonds; at the expiration of fifteen years, not less than nine per cent of the whole amount and number of said bonds; at the expiration of sixteen years, not less than ten per cent of the whole amount and number of said bonds; at the expiration of seventeen years, not less than eleven per cent of the whole amount and number of said bonds; at the expiration of eighteen years, not less than thirteen per cent of the whole amount and number of said bonds; at the expiration of nineteen years, not less than fifteen per cent of the whole amount and number of said bonds; at the expiration of twenty years, a percentage sufficient to pay off the remainder of said bonds; that the several enumerated percentages be of the entire amount of the bond issue; that each bond must be payable at the given time for its entire amount, and not for a percentage; that said bonds shall bear interest at the rate of not to exceed six per cent per annum, payable semi-annually on the first day of June and December of each year. The principal and interest shall be payable at the office of the county treasurer of the county in which the organization of the district was effected as aforesaid, and at such other place as the board of directors may designate in such bond. Said bonds shall be each of the denomination of one hundred dollars, nor more than five hundred dollars, shall be negotiable in form, executed in the name of the district and signed by the president and secretary and countersigned by the treasurer, and the seal of the district shall be affixed thereto. Said bonds shall be numbered consecutively as issued, and bear date at the time of their issue. Coupons for the interest shall be attached to each bond bearing the lithographed signatures of the president and secretary. Said bonds shall express on their face that they are issued by the authority of this chapter, stating its title and date of approval. The secretary shall keep a record of the bonds sold, their number, date of sale, the price received, and the name of the purchaser; Provided, Any such district may, by a majority vote of the legal electors of said district, provide for the issuance of bonds that will mature in any number of years less than twenty, and arrange for the payment thereof, in series as above provided; Provided, further, That when the money provided by any previous issue of bonds has become exhausted by expenditures herein authorized therefor, and it becomes necessary to raise additional money for such purposes, additional bonds may be issued, submitting the question at special election to the qualified voters of said district, otherwise complying with the provisions of this section in respect to an original issue of such bonds; Provided, also, The lien for taxes, for the payment

of the interest and principal or of any bond issue, shall be a prior lien to that of any subsequent bond issue. [L. 1907, ch. 72, § 15.]

§ 844. **Sale of bonds.** The board may sell bonds authorized as aforesaid, from time to time in such quantities as may be necessary and most advantageous to raise money for the construction or purchase of canals, reservoir sites, reservoirs, water rights and works, and otherwise to fully carry out the object and purposes of this chapter. Before making any sale the board shall, at a meeting, by resolution declare its intention to sell a specified amount of the bonds and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and a notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in the cities of Cheyenne and Chicago, and in any other newspapers at their discretion. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder and may reject all bids; but said board shall, in no event, sell any of said bonds for less than ninety-five per cent of the face value thereof. In case no bid is made and accepted as above provided, the board of directors is hereby authorized to use said bonds for the purchase of canals, reservoir sites, reservoirs, water rights and works, or for the construction of any canal, reservoir and works; Provided, Such bonds shall not be disposed of at less than ninety-five per cent of the face value thereof. [L. 1907, ch. 72, § 16.]

§ 845. **Assessments.** Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district, and the real property of the district shall be and remain liable to be assessed for such payments as herein provided. [L. 1907, ch. 72, § 17.]

§ 846. **Appropriation for expense.** It shall be the duty of the board of directors, on or before the fifteenth day of August of each year, to determine the amount of money required to meet the maintenance, operating and current expenses for the ensuing year, and to certify to the county commissioners of the county in which the office of said district is located, said amount, together with such additional amount as may be necessary to meet any deficiency in the payment of said expenses theretofore incurred. [L. 1907, ch. 72, § 18.]

§ 847. **County commissioners levy tax.** It shall be the duty of the county commissioners of the county in which is located the office of any irrigation district, at the time provided by statute for making the requisite tax levy for county purposes or immediately upon the receipt of the returns of the total assessment of said district, and after the receipt of the certificate of the board of directors certifying the total amount of money required to be raised as hereinbefore provided, to fix the rate of levy necessary to provide said amount of money, and fix the rate necessary to provide the amount of money required to pay the interest and principal of the bonds of said district as the same shall become due; also, to fix the rate necessary to provide the amount of money required for any other purposes as in this chapter provided, and which are to be raised by the levy of assessments upon the real property of said district; and to certify said respective rates to the county commissioners of each county embracing any portion of said district. The rate of levy necessary to raise the required amount of money on the

SEC. 844. The board may sell bonds, authorized as aforesaid from time to time, in such quantities as may be necessary and most advantageous, to raise money for the construction or purchase of canals, reservoir sites, reservoirs, water rights and works, and otherwise to fully carry out the object and purposes of this chapter. Before making any sale, the board shall, at a meeting, by resolution, declare an intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and enter, or cause to be entered, such resolution upon the minutes, and shall cause notice of such sale to be given by publication, in a responsible financial newspaper, or weekly financial journal, located in the city of Chicago or New York, or in other like financial newspaper, or weekly financial journal, if deemed proper in the discretion of the board. Such publication to be made in at least three issues of said financial newspaper, or financial weekly journal, and to extend over a period of not less than 20 days prior to date of sale of said bonds. The notice shall state that sealed proposals will be received by the board at their office, for the purchase of the bonds, stating the amount of the bonds, and the day, hour and place of sale. At the time appointed the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject any and all bids; but said board shall, in no event, sell any of said bonds for less than ninety per cent of the face value thereof. In case no bid is made and accepted, as above provided, the board of directors is hereby authorized to use said bonds for the purchase of canals, reservoir sites, reservoirs, water rights and works, and any necessary property, or for the construction of any canal, reservoir and works, or in payment of any indebtedness incurred under the provisions of this chapter. Provided, said bonds shall not be disposed of at less than ninety per cent of the face value thereof. And provided, further, that such bonds may be sold at private sale for not less than ninety per cent of the face value thereof, whenever hereafter, or heretofore, no sale has been effected in response to the advertisement herein provided for.

assessed valuation of the real property of said district shall be increased fifteen per cent to cover delinquencies. For the purposes of said district it shall be the duty of the county commissioners of each county in which any irrigation district is located in whole or in part, at the time of making levy for county purposes, to make a levy, at the rates above specified, upon all real estate in said district within their respective counties. All taxes levied under this chapter are special taxes. [L. 1907, ch. 72, § 19.]

§ 848. **Duty of county assessors.** It shall be the duty of the county assessor of any county embracing the whole or a part of any irrigation district, to assess and enter upon his records as assessor, in its appropriate column, the assessment of all real estate, exclusive of improvements, situate, lying and being within any irrigation district in whole or part in such county. Immediately after said assessment shall have been extended as provided by law, the assessor shall make returns of the total amount of such assessment to the county commissioners of the county in which the office of said district is located. All lands within the district for purposes of taxation under this chapter shall be valued by the assessor at the same rate per acre; Provided, That in no case shall any land be taxed for irrigation purposes under this chapter, which from any natural cause cannot be irrigated, or is incapable of cultivation. [L. 1907, ch. 72, § 20.]

§ 849. **County treasurer ex officio district treasurer.** The county treasurer of the county in which is located the office of any irrigation district, shall be and is hereby constituted ex officio district treasurer of said district, and said county treasurer shall be liable upon his official bond, and to indictment and criminal prosecution, for malfeasance, misfeasance or failure to perform any duty herein prescribed as county treasurer or district treasurer, as is provided by law in other cases as county treasurer. Said treasurer shall receive and receipt for all moneys belonging to said district. It shall be the duty of the county treasurer of each county in which any irrigation district is located, in whole or in part, to collect and receipt for all taxes levied as herein provided, in the same manner and at the same time as is required in the receipt for and collection of taxes upon real estate for county purposes. The county treasurer of each county comprising a portion only of any irrigation district, other than the county in which the office of said district is located, on the first Monday of every month shall remit to the district treasurer aforesaid, all moneys theretofore collected or received by him on account of said district. Every county treasurer, as such said district treasurer, shall keep a bond fund account and a general fund account. The bond fund shall consist of all moneys received on account of interest and principal of the bonds issued by said district, said accounts for interest and principal each to be kept separate. The general fund shall consist of all other moneys received. The district treasurer aforesaid shall pay out of said bond fund when due, the interest and principal of the bonds of said district, at the time and at the place specified in said bonds, and shall pay out of said general fund only upon order signed by the president and countersigned by the secretary of said district, as herein provided. The district treasurer, on the fifteenth day of each month, shall report to the board of directors of said district the amount of money in his hands to the credit of the respective funds above provided. All such district taxes collected and paid to the county treasurer as aforesaid shall be received by said treasurer in their official capacity, and they shall be responsible for the safe keeping, disbursement and payment thereof the same as for other moneys collected by them as such

treasurers; Provided, Said county treasurer shall not receive any commission for collection of said district taxes or extra compensation for acting as such district treasurer other than the regular salary as such county treasurer of his respective county. [L. 1907, ch. 72, § 21.]

§ 850. **Taxation of property.** The revenue laws of this state for the assessment, levying and collection of taxes on real estate for county purposes, except as herein modified, shall be applicable for the purposes of this chapter, including the enforcement of penalties and forfeiture for delinquent taxes. [L. 1907, ch. 72, § 22.]

§ 851. **Construction—Notice—Bids.** After adopting a plan for the construction of canals, reservoirs and works, the board of directors shall give notice, by publication thereof, not less than twenty days, in a newspaper published in each of the counties into which any such irrigation extends, provided a newspaper is published therein, and in such other newspapers as they may deem advisable, calling for bids for the construction of said work or any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice; said notice shall set forth that the plans and specifications can be seen at the office of the board, and of the county clerk, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and the place for opening the proposals, which at said time and place shall be opened in public, and as soon as convenient thereafter the board shall let said work, either in portion, or as a whole, to the lowest responsible bidder, or they may reject any and all bids and readvertise for proposals, or may proceed to construct the work under their own superintendence. Contracts for the purchase of material shall be awarded to the lowest responsible bidder. The person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use, for not less than fifty per cent of the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer in charge, and to be approved by the board. [L. 1907, ch. 72, § 23.]

§ 852. **Claims when paid.** No claims shall be paid by the district treasurer until the same have been allowed by the board, and only upon warrants signed by the president and countersigned by the secretary, which warrants shall state the date upon which they were authorized by the board and for what purpose; and if the district treasurer has not sufficient money on hand to pay such warrant when it is presented for payment, he shall endorse thereon, "Not paid for want of funds, this warrant draws interest from date at six per cent per annum," and endorse thereon the date when so presented, over his signature, and from the time of such presentation until paid such warrant shall draw interest at the rate of six per cent per annum; Provided, When there is the sum of one hundred dollars or more in the hands of the treasurer it shall be applied upon said warrant. All claims against the district shall be verified the same as required in the case of claims filed against counties in this state, and the secretary of the district is hereby authorized and empowered to administer oaths to the parties verifying said claims, the same as the county clerk or notary public might do. The district treasurer shall keep a register in which he shall enter such warrant presented for payment, showing the date and amount of such warrant, to whom payable, the date of presentation for payment, the date of payment,

and the amount paid in redemption thereof, and all warrants shall be paid in the order of their presentation for payment to the district treasurer. All warrants shall be drawn payable to the claimant or bearer, the same as county warrants. [L. 1907, ch. 72, § 24.]

§ 853. Tolls and charges. For the purpose of defraying the expenses of the organization of the district, and the care, operation, management, repair and improvement of all canals, ditches, reservoirs and works, including salaries of officers and employes, the board may either fix rates of tolls and charges and collect the same of all persons using said canal and water for irrigation or other purposes, and in addition thereto may provide, in whole or in part, for the payment of such expenditures by levy of assessments therefor, as heretofore provided, or by both tolls and assessment; Provided, That in case the money raised by the sale of bonds issued be insufficient, and in case bonds be unavailable for the completion of the plans of works adopted, it shall be the duty of the board of directors to provide for the completion of said plans by levy of an assessment therefor in the same manner in which levy of assessments is made for the other purposes provided for in this chapter. [L. 1907, ch. 72, § 25.]

§ 854. Directors' compensation. The board of directors shall each receive at the rate of two and one-half dollars per day while attending meetings, and their actual and necessary expenses while engaged in official business. The salary of the secretary shall not exceed five hundred dollars per annum. No director or any officer named in this act shall, in any manner, be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; nor shall receive any bonds, gratuity or bribe, and for any violation of this provision, such officer shall be deemed guilty of a felony, and such conviction shall work a forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the penitentiary not exceeding five years nor less than one year. [L. 1907, ch. 72, § 26.]

§ 855. Debt limitation. The board of directors or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this chapter, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void. [L. 1907, ch. 72, § 27.]

§ 856. Water distribution. In case the volume of water in any canal, reservoir or other works in any district shall not be sufficient to supply the continual wants of the entire district and susceptible of irrigation therefrom, then it shall be the duty of the board of directors to distribute all available water upon certain or alternate days to different localities, as they may in their judgment think best for the interests of all parties concerned. [L. 1907, ch. 72, § 28.]

§ 857. Diversion of water. Nothing herein contained shall be deemed to authorize any person or persons to divert the water of any river, creek, stream, canal or reservoir to the detriment of any person or persons having a prior right to the waters of such river, creek, stream, canal or reservoir. [L. 1907, ch. 72, § 29.]

§ 858. Boundaries—How changed. The boundaries of any irrigation district organized under the provisions of this chapter may be changed

in manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of the rights or privileges of whatever kind or nature, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for, or upon which it was liable or chargeable had such change of its boundaries not been made. [L. 1907, ch. 72, § 30.]

§ 859. **Petition—Change boundaries.** The holder or holders of title, or evidence of title, representing a majority of the acreage of any body of land adjacent to or situate within the boundaries of any irrigation district, may file with the board of directors of said district a petition in writing, praying that such lands be included in such district. The petition shall describe the tracts, or body of land owned by the petitioner, in manner and form as prescribed in § 830 for original petitions. Such petition shall be deemed to give assent of the petitioners to the inclusion in said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged. [L. 1907, ch. 72, § 31.]

§ 860. **Notice—Change boundaries.** The secretary of the board of directors shall cause notice of the filing of such petition to be given and published once each week for three consecutive weeks, in a newspaper published in the county where the office of said board is situate, which notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petitioners; giving notice to all persons interested to appear at the office of said board at a time named in said notice, and show cause, if any they have, why the petition should not be granted; and said secretary of the board shall send a sufficient and proper notice by registered mail to the last known postoffice address of any owner or owners whose lands are included in said petition. The time specified in the notice at which it shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioner, or petitioners, shall advance to the secretary sufficient money to pay the estimated cost of all proceedings under such petition before the secretary shall be required to give such notice. [L. 1907, ch. 72, § 32.]

§ 861. **Directors—Hear petition.** The board of directors, at the time and place mentioned in said notice, or at such time or times to which the hearing of said petition may adjourn, shall proceed to hear the petition, and all objections thereto, presented in writing by any person, showing cause as aforesaid, why said petition should not be granted. The failure of any person interested to show cause, as aforesaid, shall be deemed and taken as an assent on his part to the inclusion of such lands in said district as prayed for in said petition. [L. 1907, ch. 72, § 33.]

§ 862. **Assessments for debts.** The board of directors, to whom such petition is presented, may require as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as the same can be estimated by the board, as said petitioners or their grantors would have been required to pay to such districts as assessments for the payment of its pro rata share of all bonds and the interest thereon, which may have previously thereto been issued by said district had such lands been included in such district at the time the same was originally formed or when said bonds were so issued. [L. 1907, ch. 72, § 34.]

§ 863. Petition—When rejected. The board of directors, if they deem it not for the best interests of the district to include therein the lands mentioned in the petition, shall by order reject the said petition, but if they deem it for the best interests of the district that said lands be included the board may order that the district be so changed as to include therein the lands mentioned in the said petition. But said board of directors in making any such change in the boundaries of any such district shall not include therein the lands of any owner or owners objecting thereto. The order shall describe the entire boundaries of the district with the lands so included, if the district boundaries be changed thereby, and for that purpose the board may cause a survey to be made of such portion of such boundaries as may be deemed necessary; Provided, If within thirty days from the making of such order a majority of the qualified electors of the district protest in writing to said board against the inclusion of such lands in said district, said order shall be held for naught and such lands shall not be included therein. [L. 1907, ch. 72, § 35.]

§ 864. Allowance of petition. Upon the allowance of such petition and in case no protest has been filed with the board within thirty days after the entry of said order as aforesaid, a certified copy of the order of the board of directors making such change, and a plat of such district showing such change, if any, certified by the president and secretary, shall be filed for record in the office of the county clerk and recorder of each county in which are situate any of the lands of the district, and the district shall remain an irrigation district, as fully to every intent and purpose as if the lands which are included in the district by the change of the boundaries as aforesaid, had been included therein at the organization of the district; and said district as so changed and all the lands therein shall be liable for all existing obligations and indebtedness of the organized district. [L. 1907, ch. 72, § 36.]

§ 865. Secretary record minutes. Upon the filing of the copies of the order and the plat, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissable in evidence with the same effect as the petition. [L. 1907, ch. 72, § 37.]

§ 866. Re-division of districts. In case of the inclusion of any land within any district by proceedings under this chapter the board of directors shall, at least thirty days prior to the next succeeding general election, make an order re-dividing such district into three or five divisions, as nearly equal in size as may be practicable, and one director shall thereafter be elected from each division, as hereinbefore provided. [L. 1907, ch. 72, § 38.]

§ 867. Exclusion of lands. Any tract of land included within the boundaries of any such district, at or after its organization, under the provisions of this chapter, may be excluded therefrom, and for the purposes of effecting such exclusion of lands, the same form or procedure shall be had and followed as is provided by this chapter for including other or adjacent lands not originally included in such district, but such exclusion of land from the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatever kind or nature; nor shall such exclusion affect, impair or discharge any contract, obligation, lien or charge for or upon which such land would or might have become liable or chargeable, had such land not been excluded from the district. [L. 1907, ch. 72, § 39.]

§ 868. **Dissolution of district—Procedure.** Whenever a majority of the freeholders, representing a majority of the number of acres of the irrigable land, in any irrigation district organized, or hereafter to be organized, under this chapter, shall petition the board of directors to call a special election, for the purpose of submitting to the qualified electors of said irrigation district a proposition to vote on the dissolution of said irrigation district, setting forth in said petition that all bills and claims of every nature whatsoever have been fully satisfied and paid, it shall be the duty of said directors, if they shall be satisfied that all claims and bills have been fully satisfied, to call an election, setting forth the object of the said election and to cause notice of said election to be published in some newspaper in each of the counties or county in which said district is located, for a period of thirty (30) days prior to said election, setting forth the time and place for holding said election in each of the voting precincts in said districts. It shall also be the duty of the directors to prepare ballots to be used at said election, on which shall be written or printed the words, "For Dissolution—Yes," and "For Dissolution—No." [L. 1907, ch. 72, § 40.]

§ 869. **Canvass of vote.** The board of directors shall name a day for canvassing the vote, and if it shall appear that a majority of said ballots contain the words "For Dissolution—Yes" then it shall be the duty of said board of directors to declare said district to be disorganized, and shall certify to the county clerk of the respective counties in which the district is situated, stating the number of signers to said petition. That the election was called and set for said —— day of ——— (month) of ——— (year). That said election was held and that so many votes (stating the number) had been cast for, and that so many votes (stating the number) had been cast against said proposition, said certificate to bear the seal of the district, and the signature of the president and secretary of said board of directors. And it shall be the duty of the said respective clerks to record all such certificates in the record of the respective counties. Should it appear that a majority of the votes cast at said election were "For Dissolution—No" then the board of directors shall declare the proposition lost and shall cause the result and the vote to be made a part of the records of said irrigation district. [L. 1907, ch. 72, § 41.]

§ 870. **Judicial examination.** The board of directors of an irrigation district organized under the provisions of this chapter may commence special proceedings in the district court of the county in which the office of such district is located, for the purpose of having a judicial examination and judgment of the court as to the regularity and legality of the proceedings of said board and of said district providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not been sold, or disposed of. [L. 1907, ch. 72, § 42.]

§ 871. **Court to fix time for hearing petition.** The court shall fix the time for the hearing of said petition and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published for three successive weeks in a newspaper published in the county where the office of the district is situated. The notice shall state the time and place fixed for the hearing of the petition and the prayer of the petitioners, and that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds, may on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be

referred to and described in said notice as the petition of the board of directors of ——— irrigation district (giving the name) praying that the proceedings of the issue and sale of said bonds of said district may be examined, approved and confirmed by the court. Any person interested in said district, or in the issue or sale of said bonds, may demur to or answer said petition. [L. 1907, ch. 72, § 43.]

§ 872. **Confirmation of proceedings.** Upon the hearing of such special proceedings the court shall find and determine whether the notice of the filing of the petition has been duly given and published for the time and in the manner in this chapter prescribed, and shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of said chapter, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds, and the order of the sale and the sale thereof. The court, in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings, and the court may by decree approve and confirm such proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings. The cost of the special proceedings may be allowed and apportioned between the parties, in the discretion of the court. [L. 1907, ch. 72, § 44.]

§ 873. **Application of this chapter.** The provisions in this chapter shall not in any way apply to or affect lands or the owners thereof which have heretofore or which may hereafter be segregated by the state under the provisions of the act of congress known as the "Carey act" and the statutes of this state relative thereto, nor to lands and the owners thereof situated under and susceptible of irrigation from any system of reservoirs, ditches or canals for which water right permits have been granted, or shall hereafter be granted, by the state engineer to person or corporations who propose the construction of reservoirs, ditches or canals for the irrigation of the lands susceptible of irrigation therefrom. And every irrigation district organized under the provisions of this chapter shall in all things be subject to the provisions of the statutes of this state relative to the acquisition, appropriation, use and distribution of water and all rights thereto; Provided, That the water users and land owners under any irrigation system constructed by any person, company or corporation, in conformity with the laws of the state, may, after such works have reverted to them through the operation of water right contracts, organize under the provisions of this chapter for the purpose of improving the water supply, for the repair and maintenance of irrigation works and for administering the distribution of water under such irrigation systems. [L. 1907, ch. 72, § 45.]

CHAPTER 69.

IRRIGATION ENGINEERS.

§ 874. **Examination—Board.** All engineers and surveyors who shall hereafter perform any field work preliminary to the preparation of an application for permit to use the water of the state or who shall make surveys or do engineering work relative to the utilization or use of water, shall satisfy a board to be known as the board of examining

engineers, who shall consist of the state engineer and two engineers of thorough training and experience, to be appointed by the governor and serve without compensation, that they belong to one or more of the following classes:

1. Land surveyor. (Examination, plane surveying.)
2. Topographic engineer. (Examination, plane surveying and topographic surveying.)
3. Hydraulic and hydrographic engineer. (Examination, plane surveying and hydraulics.)
4. Construction and designing engineer. (Examination, plane surveying, design of irrigation works and structures, and computation of earth work.)
5. Administrative irrigation engineer. (Examination, plane surveying, hydraulics, construction work, irrigation law and practice.)

The board of examining engineers may satisfy itself by conducting examinations or by investigations of the record, training and experience of those who may desire to qualify. In case the board is satisfied as to the standing of any applicant, it shall issue a license, upon payment of a fee of five dollars, which shall be applied to cover the expenses of said board. Said license shall be signed by the president of the board and attested by the secretary under his seal. The board of examining engineers shall in all cases make inquiry relative to the moral character of every applicant for a license and no license shall be issued to any applicant who is incompetent, dishonest, intemperate or addicted to any habit which would, in the judgment of the board, render him an unsafe employe of any citizen, corporation or association of the state. Any engineer or surveyor who may qualify under any one or under any number of the classes specified herein, who shall indicate by the character of the work he performs that he is not capable of carrying on such work as set forth in his license, or who becomes morally unfit to practice under any class, may be disqualified and his license revoked. The state engineer is hereby authorized to refuse to accept any and all work of those who do not avail themselves of the benefits of this section. [L 1907, ch. 86, § 28.]

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§ 2567. Owner of canal must maintain bridge at road crossing. Any person, company, corporation or association of persons, operating or maintaining in whole or in part, either as owners, agent, occupant or appropriator any ditch, canal or water course, not being a natural stream, for irrigation or any other, and different purpose, shall put in, construct, maintain and keep in repair at his, her, its or their expense, for one year, where the same crosses any public highway or publicly traveled road, a good substantial bridge, not less than fourteen feet in width, over such ditch, canal or water course where it crosses such road. Any violation of the provisions of this section shall be a misdemeanor, and upon conviction thereof, the person so offending shall pay a fine in any sum not exceeding one hundred dollars for each day such ditch, canal or water course shall be unbridged, insufficiently bridged, or permitted to remain out of repair; Provided, That after the expiration of one year, from the construction of said bridge, the road supervisor of the road district in which said bridge is located, shall upon being notified by the owner or owners of the ditch, canal or water course over which such bridge is constructed, at once inspect said bridge, and if found in a good and lawful condition, shall accept the same for the county in which it is located, and said bridge shall thereafter be maintained by the said county. [L. 1895, ch. 69, § 55; R. S. 1899, § 1959; L. 1901, ch. 21.]

§ 2575. Restrictions upon damming water in streams. No person or persons, company or corporation, or association of persons, shall be permitted or allowed to dam the water or waters of any stream or irrigating or mining ditch or any water way so that the water thus dammed, or any part thereof, shall overflow any public road or highway, or undermine, weaken or damage any bridge, or any walls or embankment of any road, nor shall any person, association or corporating owning or controlling any ditch or irrigated lands, allow any waste water from the same to flow across or upon any public road or highway. Any person finding a public road or highway or any bridge flooded or damaged by such waste water may report the same to the road supervisor of the county in which such road, highway or bridge may be located, who shall make an examination and report to the prosecuting attorney of the said county. If the report of the said road supervisor shows that such damage has occurred, it shall then be the duty of the said prosecuting attorney to institute proceedings against the party or parties whose negligence has caused such damage. [L. 1895, ch. 69, § 61; R. S. 1899, § 1965; L. 1905, ch. 63, § 1.]

§ 2576. Penalty for violating last section. Any person or persons, company or corporation, violating the provisions of the last preceding section, shall be liable to a fine not to exceed one hundred dollars, and shall also be liable to the party injured for any damages resulting therefrom. [L. 1895, ch. 69, § 62; R. S. 1899, § 1966.]

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§ 3456. Use of water. Whenever any person, persons or corporation, shall be engaged in mining or milling in this state, and in the prosecution of such business shall hoist or bring water from mines or natural water courses, such person, persons or corporation shall have the right to use such water in such manner, and direct it into such natural course or gulch as their business interests may require; Provided, That such diversion shall not infringe on vested rights. The provisions of this section shall not be construed to apply to new or undeveloped mines, but to those only which shall have been open and require drainage or other direction of water. [L. 1888, ch. 40, § 4; R. S. 1899, § 2535.]

CHAPTER 257.

RECOVERY FOR LABOR AND SUPPLIES—IRRIGATION WORKS.

§ 3823. Contractor's bond. Whenever any ditch or canal company, or other owner or owners, shall contract with any person, persons or corporation, for the construction of its, his or their ditch, canal or reservoir, or any part thereof, such company, owner or owners, shall take from the person, persons or corporation with whom such contract is made, a good and sufficient bond in some guarantee or surety company authorized to do business in this state, conditioned that such contractor or contractors shall pay or cause to be paid all laborers, mechanics, material men, ranchmen, farmers, merchants and other persons who supply such contractor or contractors, or any of his or their sub-contractors with labor, work, material, ranch or farm products, provisions or goods of any kind, all just debts incurred therefor in carrying on such work, which bond shall be filed by such company or other owner in the office of the county clerk and ex officio register of deeds in the county where the principal work of such contractor shall be carried on; and if any such ditch or canal company, or other owner or owners, shall fail to take such bond, such ditch or canal company or other

owner or owners shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor, or contractors, or any of his or their sub-contractors. Any such contractor or contractors may take a similar bond from each sub-contractor to secure the payment of all debts of the kind above mentioned incurred by him, and file the same as above provided. All such persons mentioned in this section to whom any debt of the kind above mentioned shall be due from any contractor or sub-contractor shall severally have a right of action upon any such bond covering such debt taken as herein provided for the recovery of the full amount of such debt. Provided, however, That in order that the right of action upon such bonds may exist, such persons or parties herein granted such right shall comply with either of the following conditions, to-wit: First, an action in a court of competent jurisdiction, in the county where such bond is filed, shall be commenced within ninety days after the last item of indebtedness shall have accrued; or, second, an itemized statement of the indebtedness duly verified, shall, within ninety days after the last item of such indebtedness shall have accrued, be filed in the office of the county clerk of the proper county; and an action shall be brought in any court of competent jurisdiction of such county within three months after the filing of such statement. In case an action is commenced upon the bond of a contractor liable for the claim, and in such case the result of such action shall be binding upon the sub-contractor, and his sureties, and in any case when a contractor has paid a claim for which a sub-contractor is liable, such contractor shall bring action against the sub-contractor and his sureties within sixty days after the payment of such claim. [L. 1909, ch. 78, § 1.]

§ 3824. Lien statement. Every laborer, mechanic, ranchman, farmer, merchant or other person performing any work or labor or furnishing any material, ranch or farm products, provisions, goods or supplies to any contractor or sub-contractor in the construction of any ditch, canal or reservoir, or any part thereof used by such contractor or sub-contractor in carrying on said work of construction, whose demand for work, labor, material, ranch or farm products, goods or supplies so furnished has not been paid, may deliver to the owner or owners of such ditch, canal or reservoir, or to its, his or their agent, a verified account of the amount and value of the work and labor so performed or the material, ranch or farm products, provisions, goods or supplies so furnished, and thereupon such owner or owners or its, his or their agent, shall retain out of the subsequent payments to the contractor or contractors the amount of such unpaid account for the benefit of the person to whom the same is due. [L. 1909, ch. 78, § 2.]

§ 3825. Recovery—Procedure. Whenever any verified account mentioned in the last preceding section shall be placed in the hands of any such owner or owners or its, his or their agent, as above stated, it shall be the duty of such owner or owners to furnish the contractor with a copy of such verified account, so that if there be any disagreement between the debtor and creditor as to the amount due the same may be amicably adjusted, and if the contractor, or sub-contractor if he be the debtor, shall not, within ten days after the receipt of such account, give the said owner or owners or its, his or their agent, written notice that the claim is disputed, he shall be considered as assenting to its payment, and the owner or owners or its, his or their agent, shall be justified in paying the same when due and charging the same to the contractor. The person or persons to whom any such debt is due and who shall deliver a verified account thereof as above provided, may recover the amount thereof in an action at law, to the extent of

any balance due by such owner or owners to the contractor at or after the time of delivering the verified account. Provided, That nothing contained in this section or in § 3824 shall interfere with the right of action upon the bond or bonds provided for in § 3823, or against the company or other owner, for the full amount of any such debt in case of a failure to take a bond. [L. 1909, ch. 78, § 3.]

CHAPTER 262.

CONDEMNATION—IRRIGATION, MINING OR DOMESTIC WATER.

§ 3874. Supply. Every person, association of persons, company or corporation (the word "corporation" including a municipal corporation wherever appearing in this chapter), organized or hereafter organized under the laws of this state, and legally doing business under the laws of this state, who shall in the course of their business require a way of necessity for reservoirs, drains, flumes, ditches, canals or electric power transmission lines, on or across the lands of others for agricultural, mining, milling, domestic, electric power transmission, municipal or sanitary purposes, shall have power and are authorized to enter upon any land for the purpose of examining and making surveys for reservoirs, drains, flumes, ditches, canals or electric power transmission, or any branch or branches thereof, or for the purpose of changing any part of the original lines of any reservoir, drain, flume, ditch, canal, or electric power transmission lines, belonging to the corporation or person applying for such right of way, already constructed, owned by such person, association of persons, company or corporation, seeking to exercise the powers herein, to take, hold and appropriate so much real property as may be necessary for the location, construction, and convenient maintenance and use of such reservoir, drain, flume, ditch, canal or electric power transmission line, or any branch or branches thereof, or for the relocation of the whole or any part thereof, or any line to which such person, association of persons, company or corporation, may desire to change or to enlarge any such reservoir, drain, flume, ditch, canal or electric power transmission line owned by any such person, association of persons, company or corporation; to enlarge any ditch, flume, drain or canal used for the conveyance of water, for the purpose of conveying additional waters in and through the same; to take and appropriate material for the construction and repair of any such reservoir, drain, flume, ditch, canal or electric power transmission line; to take, hold and appropriate a right of way over any such lands or adjacent lands sufficient to enable such persons, associations of persons, companies or corporations, to construct, repair, use and maintain any such reservoir, drain, flume, ditch or canal, or electric power transmission line upon the line of the location or re-location thereof; Provided, That the land so held, taken and appropriated otherwise than by the consent of the owner, shall not exceed one hundred feet in width on each side of the outer sides or marginal lines of any such reservoir, drain, flume, ditch, canal or electric power transmission line, unless a greater width is necessary for excavation, embankments or depository for waste earth; and in no case shall the area taken exceed the actual necessities of the work constructed; and, Provided, further, That no appropriation of private property for the use of any such person, association of persons, company or corporation shall be made until further compensation therefor be made to the owner or owners thereof; and, Provided, also, That the words, "private property," as used in this chapter shall be understood to include any advantage, the previous construction of any such reservoir, drain, flume, ditches, or any neces-

sary part or parts thereof being the property of others, may be to any such person, association of persons, company or corporation and that the value of such advantage may have due consideration in such condemnation proceedings. [L. 1907, ch. 52, § 1; L. 1909, ch. 96, § 1.]

§ 3875. Procedure. Whenever any such person, association of persons, company or corporation shall not have acquired any real property, or any interest therein required for the purposes aforesaid, and the compensation to be paid for the taking or injuriously affecting such property has not been agreed upon by the parties, then such person, association of persons, company or corporation may apply to the judge of the district court of the county where the real property or any part thereof is situated, either in term time or vacation, by filing with the clerk of such court a petition, as by this chapter provided, praying such judge to cause an assessment to be made of the compensation to be paid to the owners and persons interested for the taking or injuriously affecting such lands, real property or claims aforesaid. [L. 1907, ch. 52, § 2.]

§ 3876. Petition—What to contain. The said petition shall contain a specific description of each parcel of property, interest or right, sought to be taken or injuriously affected, the work, if any, intended to be constructed thereon, the use to which the same is to be applied, the immediate necessity for the appropriation, the name of the owner of each parcel, if known, or if not known, a statement of that fact, the names of all persons having or claiming an interest, legal or equitable, in the property, so far as the same can be ascertained, and a prayer for the appropriation of the property, and the appointment of commissioners as aforesaid. The petition may include any number of separate parcels of property, rights or interests, situated in the same county, and the compensation for each shall be assessed separately by the same or different commissioners as the court or judge may direct. All pleadings filed in any such proceeding shall be verified in the same manner as is required of pleadings filed in civil actions, and any matter set forth in any such pleading may be controverted by counter pleadings, but unless so controverted all such matters shall be deemed to be true. [L. 1907, ch. 52, § 3.]

§ 3877. Notice. Any such person, association of persons, company or corporation seeking to acquire any real property or interest therein as aforesaid shall cause ten days' notice to the intended filing of said petition to be given to the owners and persons interested in the property sought to be taken or affected, either by personal service, or by leaving a copy thereof at the usual place of residence of such persons within this state, or when a person having an interest is unknown, or his residence is beyond this state, or is unknown, or he seeks to evade service, then service by publication may be had against him by publishing in a newspaper of general circulation, in the county wherein the petition is to be filed, for four consecutive weeks, a notice containing a summary statement of the object of the prayer of the petition so far as it relates to the property of the person thus to be notified, together with the time and place of filing such petition; and the fact of publication may be proved by the affidavit of any person knowing the same. [L. 1907, ch. 52, § 4.]

§ 3878. Hearing. Such causes shall be heard by judges when so arising during the vacation or recess of the court as well as during the term time, and if arising during the term time shall advance such causes to the head of the docket and give them priority for hearing over other causes. [L. 1907, ch. 52, § 5.]

§ 3879. Commissioners. On the day named in any such notice or publication, or on some adjourned day, the court or judge shall hear the proofs and allegations of all parties interested touching the regularity of the proceedings and the immediate necessity of the appropriation. If the judge determine these questions in favor of the petitioner as to any or all of the property and persons interested therein, he shall make an order appointing three impartial freeholders of the county, to ascertain and determine the compensation to be paid to the owners and persons interested for the taking and injuriously affecting such real property for the purposes stated in the petition, and the court or judge shall in such order fix the time and place for the first meeting of such commissioners, and a time within which the commissioners shall make and certify their ascertainment and assessment. The court or judge shall have authority to appoint other commissioners in place of any who shall desire or refuse or neglect to serve and act under their appointment. [L. 1907, ch. 52, § 6.]

§ 3880. Commissioners' duties. The commissioners before entering upon their duties as such shall take an oath to faithfully and impartially discharge their duties as such commissioners and they shall carefully inspect and view the real property sought to be taken or affected, and any one of them may administer oaths to witnesses produced before them and they may issue subpoenas and compel witnesses to attend and testify and may adjourn and hold meetings for that purpose and shall give reasonable previous notice to the parties interested. They shall hear proofs and allegations of the parties, and any two of them, after viewing the premises and hearing proofs as aforesaid, shall without fear, favor or partiality ascertain and certify the compensation proper to be made to the owners and persons interested in the real property to be taken or affected, and shall ascertain and certify the amount of land necessary for any such irrigation work, as well as all damages accruing to the owners or parties interested, in consequence of the condemnation of the same, or to the business conducted thereon, taken or injuriously affected as aforesaid. The said commissioners or a majority of them shall make, prescribe and file with the clerk of the court in which such proceedings are had a certificate of their assessment, in which said real property shall be described with convenient certainty and accuracy. [L. 1907, ch. 52, § 7.]

§ 3881. Award—How reviewed. The award of the said commissioners may be reviewed by the court in which such proceedings may be had, on written exceptions filed by either party, within fifteen days after the filing of such certificate; and, upon good cause shown, the court may order a new assessment, or may make such other order as right and justice may require. If no sufficient exceptions be filed within the said fifteen days, and if no application be made within such time for a jury trial, as provided in the next succeeding section, the report of the commissioners shall be confirmed. When an assessment shall have been regularly made by the commissioners, as aforesaid, either party, within fifteen days after the filing of the certificate of such assessment, if not satisfied with the award, may demand, and shall be entitled to a trial by jury in the district court, by filing in the proceeding a written application to that effect, accompanied by an affidavit that such application is made in good faith, and not for the purpose of delay, and that the affiant verily believes injustice has been done the applicant by the award of the commissioners. If such jury trial be so demanded after an assessment is regularly made, then no new assessment by commissioners shall be ordered under the last preceding section.

When a jury trial shall have been so demanded, the jury shall determine the compensation proper to be made to the owners and persons interested for the taking or affecting of such real property or damage to business conducted thereon. The said trial by jury shall be conducted in the same manner as trials by jury in civil actions, and, except as otherwise provided in this chapter, the provisions of the code of civil procedure relating to new trials, bills of exceptions and proceedings in error, shall constitute the rules of practice in all proceedings under this chapter, so far as the same may be applicable. The jury shall render its verdict in writing, signed by the foreman, which shall be entered of record, and, unless upon motion, to be filed within ten days after the verdict is rendered, a new trial be granted, an order shall be made confirming such verdict. [L. 1907, ch. 52, § 8;]

§ 3882. **Confirmation of report.** Upon the confirmation of the report of the commissioners or the verdict of the jury as herein provided, and upon due proof that such compensation has been paid to the parties entitled to the same, or has been deposited to the credit of such parties with the clerk of the court, or with the county treasurer, or in such other place as may be approved by the court for that purpose, the court shall make and cause to be entered an order describing such real property in the manner aforesaid, such ascertainment of compensation, with the mode of making it, and each payment or deposit of the compensation as aforesaid, which said order, shall in all cases reserve to the owner or occupant of any real property through, over or across which any right of way is acquired, under the provisions of this act, the right to establish a suitable crossing connecting his or their lands on either side of said right of way, at any point which may be selected by said owner or occupant, the ditch, canal, drain, flume, or other irrigation works to be protected at such crossing by the construction and maintenance of a suitable bridge or viaduct at the expense of such owner or occupant, and the said owner or occupant to have the right to cross and recross the same at all times at his pleasure, a certified copy of which shall be recorded and indexed in the office of the county clerk and ex officio register of deeds, in like manner, and with like effect, as if it were a deed of conveyance from the said owners and parties interested, to the person, association of persons, company or corporation seeking to take and acquire real property as by this act provided, their heirs, successors or assigns. Upon the entry of such order the said petitioner shall become seized in fee of all such property described in said order as is required to be taken as aforesaid, and may take possession of and hold and use the same for the purposes specified in said petition, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate or verdict, or in the order of the court. [L. 1907, ch. 52, § 9.]

§ 3883. **Appeal.** Either party may file a petition in error in the supreme court within thirty days after the confirmation of the report of the commissioners or the confirmation of the verdict of the jury, as the case may be, and the proceedings in error shall in every respect be conducted as in civil actions; Provided, however, That any rights acquired or to be acquired by the process of immediate appropriation, and taking of the property in the manner provided herein, shall in no manner be prejudiced thereby. [L. 1907, ch. 52, § 10; L. 1909, ch. 96, § 2.]

§ 3884. **Bond for possession.** On application made for that purpose to the court or judge, and on giving a bond in such amount, and

with such sureties as shall be approved by the court or judge, conditioned for the payment of such condemnation money, compensation and costs, as shall be finally assessed and determined, such person, association of persons, company or corporation as herein mentioned, may enter upon and appropriate the property in question, and in such case all actions or proceedings against such person, association of persons, company or corporation, on account thereof, shall be stayed until such compensation is finally assessed and determined. [L. 1909, ch. 96, § 3.]

§ 3885. Right of entry. On complying with the provisions of the last section, such person, association of persons, company or corporation, may at any stage of any proceeding mentioned in this chapter acquire the right to enter upon and appropriate the property in question; but after giving such bond, and so entering into the possession of said property, such person, association of persons, company or corporation, cannot abandon or dismiss the proceedings; and where possession has been so obtained, it shall be lawful for the owners and parties interested to conduct the proceedings to a final conclusion, if the same shall be delayed by such person, association of persons, company or corporation so entering and appropriating such property. [L. 1909, ch. 96, § 4.]

§ 3886. Additional security. The application named in § 3884 shall be made to the district court in which such proceeding was begun, or to the judge thereof in vacation, and the bond named in said section shall be made payable to the state. The court or judge may at any time upon a proper showing require such person, association of persons, company or corporation, so entering and appropriating such property to give new or additional security under said section, and any such original, new or additional bond may be sued upon in the name of the state by and for the use of any person in interest. [L. 1909, ch. 96, § 5.]

§ 3887. Defective proceedings. At any time after an attempt to acquire title by appropriation as herein provided, or otherwise, if it shall be found that the title thereby attempted to be acquired is defective, any such person, association of persons, company or corporation may proceed anew to acquire or perfect the same in the same manner as if no assessment had been made. [L. 1907, ch. 52, § 11.]

§ 3888. Public grounds. If it shall be necessary in the location of any part of any reservoir, drain, flume, ditch or canal to occupy any road, street, alley or public way of ground of any kind or any part thereof, it shall be competent for the municipal or other corporation or public officials or public authorities owning or having charge thereof, and such person, association of persons, company or corporation, to agree upon the manner and upon the terms and conditions upon which same may be used or occupied; and if said parties shall be unable to agree thereon and it shall be necessary in the judgment of such person, association of persons, or the directors of such corporation, to use or occupy such road, street, alley or other public way or ground, such person, association of persons, company or corporation may appropriate so much of the same as may be necessary for the purposes of such reservoir, drain, flume, ditch or canal in the same manner and upon the same terms as is provided in this chapter for the appropriation of property of individuals. [L. 1907, ch. 52, § 12.]

§ 3889. Commissioners' compensation. The said commissioners shall receive five dollars per day as compensation for each day actually employed, such compensation to be taxed and allowed by the court or judge. [L. 1907, ch. 52, § 13.]

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